

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

* * * * *
UNITED STATES OF AMERICA *
vs. * Case No. 2:18-cr-780
QUENTIN JOHN FISHBURNE * March 2, 2020
* * * * *

REPORTER'S OFFICIAL TRANSCRIPT OF THE
JURY TRIAL - DAY 1 HELD BEFORE
THE HONORABLE DAVID C. NORTON
UNITED STATES DISTRICT JUDGE
MARCH 2, 2020

APPEARANCES:

FOR THE GOVERNMENT:

Christopher Braden Schoen
Janet Carra Henderson
US Attorney's Office (Chas)
151 Meeting Street
Suite 200
Charleston, SC 29401
843.727.4381

FOR DEFENDANT FISHBURNE:

Albert Peter Shahid Jr.
Shahid Law Office
89 Broad Street
Charleston, SC 29401
843.853.4500

Official Court Reporter: Tana J. Hess, CRR, FCRR, RMR
 U.S. District Court Reporter
 Middle District of Florida
 Tampa Division
 801 N. Florida Avenue
 Tampa, FL 33602
 813.301.5207
 tana_hess@flmd.uscourts.gov

Proceedings recorded by mechanical stenography using
 computer-aided transcription software.

INDEX

<u>NAME</u>	<u>PAGE</u>
Delanty Langenfeld	
Direct Examination by Ms. Henderson	45
Cross-Examination by Mr. Shahid	58
Redirect Examination by Ms. Henderson	65
Richard Riney	
Direct Examination by Ms. Henderson	68
Cross-Examination by Mr. Shahid	72
James Davis	
Direct Examination by Ms. Henderson	75
Cross-Examination by Mr. Shahid	79
Redirect Examination by Ms. Henderson	87
Recross-Examination by Mr. Shahid	88
Robert Cook	
Direct Examination by Mr. Schoen	88
Cross-Examination by Mr. Shahid	98

1	<u>INDEX</u>	
2	<u>NAME</u>	<u>PAGE</u>
3	Brandon Duboise	
4	Direct Examination by Mr. Schoen	103
5	Cross-Examination by Mr. Shahid	113
6	Redirect Examination by Mr. Schoen	130
7	Recross-Examination by Mr. Shahid	131
8	Bobby Callahan	
9	Direct Examination by Mr. Schoen	149
10	Cross-Examination by Mr. Shadid	175
11	Redirect Examination by Mr. Schoen	184
12	Recross-Examination by Mr. Shahid	185
13	Chad Smith	
14	Direct Examination by Mr. Schoen	186
15	Cross-Examination by Mr. Shahid	197
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>EXHIBITS</u>	
2	<u>NUMBER</u>	<u>PAGE</u>
3	Government's Exhibit Number 1	44
4	Government's Exhibit Number 2	50
5	Government's Exhibit Number 3	44
6	Government's Exhibit Number 4	97
7	Government's Exhibit Number 5	92
8	Government's Exhibit Number 6	109
9	Government's Exhibit Number 7	111
10	Government's Exhibit Number 9	44
11	Government's Exhibit Number 10	44
12	Government's Exhibit Number 11	163
13	Government's Exhibit Number 12	163
14	Government's Exhibit Number 13	163
15	Government's Exhibit Number 14	44
16	Government's Exhibit Number 15	196
17		
18	Defendant's Exhibit Number 2	125
19	Defendant's Exhibit Number 3	128
20		
21	Court's Exhibit Number 1	143
22		
23		
24		
25		

9 : 4 1 A M 1 (Call to order of the Court.)

9 : 4 1 A M 2 THE COURT: Take your seats. Thanks. Y'all said you
9 : 4 1 A M 3 had something you wanted to talk about before we brought the
9 : 4 1 A M 4 jury in later on. Yes, sir?

9 : 4 1 A M 5 MR. SCHOEN: Good morning, Your Honor.

9 : 4 1 A M 6 THE COURT: Good morning.

9 : 4 2 A M 7 MR. SCHOEN: We do have at least one matter to bring
9 : 4 2 A M 8 up with the Court --

9 : 4 2 A M 9 THE COURT: Okay.

9 : 4 2 A M 10 MR. SCHOEN: -- prior to getting started. We did
9 : 4 2 A M 11 some research this weekend, and it appears to us from our
9 : 4 2 A M 12 review of the law that it is improper for either side to call a
9 : 4 2 A M 13 witness to the stand knowing that that witness will invoke his
9 : 4 2 A M 14 or her Fifth Amendment right for the sole purpose of having the
9 : 4 2 A M 15 jury watch that witness invoke that right. Based on my
9 : 4 2 A M 16 conversations with Mr. Geel, my understanding is that is
9 : 4 2 A M 17 essentially what Ms. Ellison intends to do, and he's present,
9 : 4 2 A M 18 and he can correct me if I'm misspeaking, but my understanding
9 : 4 2 A M 19 is that she plans to invoke her right under the Fifth Amendment
9 : 4 2 A M 20 to virtually -- in response to virtually any question beyond
9 : 4 2 A M 21 her name.

9 : 4 2 A M 22 So I don't think -- the Government certainly
9 : 4 2 A M 23 doesn't feel comfortable calling her, and we would argue that
9 : 4 2 A M 24 the defense shouldn't be able to either, and in that instance,
9 : 4 3 A M 25 we would ask that, you know, the Court deal with that before

9 : 4 3 A M 1 the jury comes in here and we not have her up and being shown
9 : 4 3 A M 2 things just to invoke her Fifth Amendment right.

9 : 4 3 A M 3 THE COURT: Yes, sir, Mr. Shahid? Mr. Geel?

9 : 4 3 A M 4 MR. GEEL: Your Honor, if I may, one other thing I'd
9 : 4 3 A M 5 like to bring to the Court's attention is I concur with
9 : 4 3 A M 6 Mr. Schoen's representation. There's also a broader issue
9 : 4 3 A M 7 which is to say that Ms. Ellison is here, so we're not trying
9 : 4 3 A M 8 to be cute, but it's our position that we're not subject to
9 : 4 3 A M 9 subpoena by either of the parties in this case. We're going to
9 : 4 3 A M 10 move to quash the subpoenas entirely at this time. I don't
9 : 4 3 A M 11 think the Government has the authority to subpoena her either
9 : 4 3 A M 12 to this hearing or this trial, nor does Mr. Shahid.

9 : 4 3 A M 13 THE COURT: That's an interesting position. What do
9 : 4 3 A M 14 you base that on?

9 : 4 3 A M 15 MR. GEEL: Well, Your Honor, respectfully I think the
9 : 4 3 A M 16 rules contemplate subpoenaing witnesses. Ms. Ellison is a
9 : 4 3 A M 17 Defendant in this case. I mean, she's in a pretrial diversion
9 : 4 3 A M 18 program, but she's still a Defendant here. If, God forbid, she
9 : 4 3 A M 19 fails to comply with the diversion program, she's going to be
9 : 4 3 A M 20 right back here on trial herself in a posture where she's been
9 : 4 3 A M 21 compelled to testify in this matter or at least compelled to
9 : 4 4 A M 22 take the stand.

9 : 4 4 A M 23 So the Fifth Amendment privilege I think is --
9 : 4 4 A M 24 it's a little bit clearer as to what that covers, but we think
9 : 4 4 A M 25 there's a broader problem, that she's simply beyond compulsory

9 : 4 4 A M 1 process from both of these parties.

9 : 4 4 A M 2 THE COURT: Okay. Anybody disagree with that?

9 : 4 4 A M 3 MR. SHAHID: Sir?

9 : 4 4 A M 4 THE COURT: Do you disagree with that?

9 : 4 4 A M 5 MR. SHAHID: I think he has a valid point. I think
9 : 4 4 A M 6 it creates a whole new can of worms for everybody, Judge. This
9 : 4 4 A M 7 is the problem. She's not just a witness. She's a witness
9 : 4 4 A M 8 that's given an affidavit, a sworn statement in which her
9 : 4 4 A M 9 testimony, if believed, will aid this Defendant in being found
9 : 4 4 A M 10 not guilty. This was supplementary information about her
9 : 4 4 A M 11 statement that was first brought up at a detention hearing back
9 : 4 4 A M 12 in 2018, and I've given a copy of her statement to the
9 : 4 4 A M 13 Government. What she says, if she's believed, can exonerate
9 : 4 4 A M 14 this Defendant from Count 1 of the Indictment.

9 : 4 5 A M 15 And so she is now -- if Mr. Geel is correct, she
9 : 4 5 A M 16 is now unavailable, and because she's unavailable, then the
9 : 4 5 A M 17 statements should come in because she is unavailable. There's
9 : 4 5 A M 18 no other way for me to get this information in. She becomes
9 : 4 5 A M 19 available under this theory that she's not subject to
9 : 4 5 A M 20 compulsory process when her case is over. She's then free, and
9 : 4 5 A M 21 she's going to be required to testify. Now the Government --
9 : 4 5 A M 22 even if the Government had decided to proceed -- and this is
9 : 4 5 A M 23 why I made the motion earlier on a Motion for Severance in case
9 : 4 5 A M 24 her case would go forward and this would be resolved. The
9 : 4 5 A M 25 severance motion got changed because she's been put in the

9 : 4 5 A M 1 pretrial diversion program, and now Mr. Fishburne is going
9 : 4 5 A M 2 first on this trial, but this evidence, her testimony is
9 : 4 6 A M 3 critical in his defense, if he was unaware, that he did not
9 : 4 6 A M 4 know -- knowingly possess the gun in the car on March of 2018.
9 : 4 6 A M 5 That statement in and of itself is prejudicial to him if it
9 : 4 6 A M 6 does not come in somehow. So either the statement comes in,
9 : 4 6 A M 7 and I can proffer the statement to the Court, or we continue
9 : 4 6 A M 8 this trial until her charges are resolved. It's one or the
9 : 4 6 A M 9 other, but I've got to get her -- I got to get her testimony
9 : 4 6 A M 10 in. I expected, and we talked about this on Friday, that while
9 : 4 6 A M 11 she may have taken the Fifth, I was going to at least be able
9 : 4 6 A M 12 to somehow proffer her statement into evidence to get it in
9 : 4 6 A M 13 through a back door process. Now what I'm told is she has no
9 : 4 6 A M 14 right to be here -- she has no --

9 : 4 6 A M 15 THE COURT: Duty.

9 : 4 6 A M 16 MR. SHAHID: Duty, not right, duty to be here at all.

9 : 4 6 A M 17 THE COURT: But -- so you agree with Mr. Geel's
9 : 4 7 A M 18 position that since she's still a Defendant and still facing
9 : 4 7 A M 19 criminal charges, that she's beyond the subpoena power of the
9 : 4 7 A M 20 Court to have either side testify?

9 : 4 7 A M 21 MR. SHAHID: I don't have a counterargument to that.
9 : 4 7 A M 22 I don't want to necessarily agree to that and put him in
9 : 4 7 A M 23 opposition, but I think that is where we are quite frankly.

9 : 4 7 A M 24 THE COURT: How about you, Mr. Schoen?

9 : 4 7 A M 25 MR. SCHOEN: I didn't research that, Judge. I didn't

9 : 4 7 A M 1 know that that argument was coming.

9 : 4 7 A M 2 THE COURT: Sounds like a pretty good one.

9 : 4 7 A M 3 MR. SCHOEN: You know, I don't know -- I think that
9 : 4 7 A M 4 the cleaner, easier way to do it if she can't say anything
9 : 4 7 A M 5 other than, "I take the Fifth," there's lots of law --

9 : 4 7 A M 6 THE COURT: I understand that, but if she is
9 : 4 7 A M 7 quote-unquote unavailable as a witness, then under the Federal
9 : 4 7 A M 8 Rules of Evidence, a statement of an unavailable witness comes
9 : 4 7 A M 9 in.

9 : 4 7 A M 10 MR. SCHOEN: Your Honor, I think that -- I guess I
9 : 4 7 A M 11 would want to get into the details of that unavailability --

9 : 4 7 A M 12 THE COURT: Okay.

9 : 4 7 A M 13 MR. SCHOEN: -- argument because the -- a sworn
9 : 4 8 A M 14 statement, as I understand the rule, comes in if the -- if the
9 : 4 8 A M 15 declarant was subject to both the penalties of perjury and
9 : 4 8 A M 16 was -- was -- there was an opportunity for cross-examination.
9 : 4 8 A M 17 So when we had this bond hearing, I specifically had quite an
9 : 4 8 A M 18 extended discussion with the magistrate judge about the fact
9 : 4 8 A M 19 that I did not want the statement to be even mentioned if she
9 : 4 8 A M 20 wasn't going to be put on the stand and cross-examined, and the
9 : 4 8 A M 21 magistrate judge was concerned about her rights and so would
9 : 4 8 A M 22 not allow me to call her and cross-examine her, and so we've
9 : 4 8 A M 23 been denied the opportunity to subject her testimony to cross
9 : 4 8 A M 24 examination. As Your Honor knows, there's quite --

9 : 4 8 A M 25 THE COURT: I don't know whether you've been denied

1 or you voluntarily denied yourself the opportunity by objecting
2 to it.

3 MR. SCHOEN: No, we've not had an opportunity to put
4 her up and cross-examine her. I would say if she had taken the
5 stand to testify at that bond hearing and we had been able to
6 cross-examine her, then she's unavailable and this is prior
7 testimony, but we didn't get that chance, and as you know,
8 there's a lot of very -- a lot of evidence that impeaches what
9 she -- what she's claiming in that letter, and furthermore, you
10 know, she's represented to the agent -- she's said, "Hey, can I
11 recant this statement?" So the notion that -- the notion that
12 somehow Mr. Fishburne is being prejudiced by this, seems like
13 the Government would be highly prejudiced. They can admit a
14 statement we haven't been able to cross-examine.

15 MR. SHAHID: Judge, I tried to remedy this by taking
16 her deposition.

17 THE COURT: well, she would have taken the same
18 position.

19 MR. SHAHID: well, she may have.

20 THE COURT: If she's not going to testify at trial,
21 she's certainly not going to testify at a deposition. If she's
22 not available to be subpoenaed to testify at trial, she
23 certainly couldn't be available to be subpoenaed to testify at
24 a deposition.

25 MR. SHAHID: Let me just go another step with this,

9 : 4 9 A M 1 Judge. The Government has created this problem, not the
9 : 4 9 A M 2 Defendant, because they had the right to do this. They
9 : 4 9 A M 3 indicted her. They indicted her, and because they indicted her
9 : 4 9 A M 4 and she is a criminal defendant with charges pending, because
9 : 5 0 A M 5 the motion has been to continue her prosecution until the
9 : 5 0 A M 6 pretrial diversion issue has been resolved -- and they have a
9 : 5 0 A M 7 right to do that. I'm not fussing at the Government, but
9 : 5 0 A M 8 because they have indicted her, they have created a situation
9 : 5 0 A M 9 that they are now complaining about that they knew existed
9 : 5 0 A M 10 prior to the Indictment. At the hearing that they had on --
9 : 5 0 A M 11 the detention hearing back in 2018 --

9 : 5 0 A M 12 THE COURT: That would be a post-Indictment; wouldn't
9 : 5 0 A M 13 it?

9 : 5 0 A M 14 MR. SHAHID: I think that was prior to her being
9 : 5 0 A M 15 indicted. She was not a Defendant at the time.

9 : 5 0 A M 16 MR. SCHOEN: She was not a Defendant at the time. It
9 : 5 0 A M 17 was a supervised release hearing.

9 : 5 0 A M 18 THE COURT: Okay. Gotcha.

9 : 5 0 A M 19 MR. SHAHID: So they knew about the existence of this
9 : 5 0 A M 20 statement that was pend -- brought to the magistrate judge's
9 : 5 0 A M 21 attention in that she was going to take responsibility for the
9 : 5 0 A M 22 gun. So prior to that, prior to that, they were aware of her
9 : 5 0 A M 23 position. They then elected to indict her, which they had a
9 : 5 0 A M 24 right to do. I'm not fussing at the Government for doing that,
9 : 5 0 A M 25 but because they took that stance, they have now created this

9 : 5 1 A M 1 dilemma in which my critical witness that goes to the heart of
9 : 5 1 A M 2 Count 1 of this Indictment, that witness has now become
9 : 5 1 A M 3 unavailable, and they even take the position now this morning
9 : 5 1 A M 4 that we can't call her knowing that she may take the Fifth
9 : 5 1 A M 5 Amendment. So I can't even ask her questions under their
9 : 5 1 A M 6 theory about her giving a statement and whether or not a
9 : 5 1 A M 7 statement is inconsistent with what she's going to say at
9 : 5 1 A M 8 trial.

9 : 5 1 A M 9 THE COURT: well, I think you can call her as a
9 : 5 1 A M 10 witness, but she has to do more than just take the Fifth
9 : 5 1 A M 11 Amendment. Mr. Schoen's point is you can't call her, put her
9 : 5 1 A M 12 under oath and ask her questions. She takes the Fifth
9 : 5 1 A M 13 Amendment right out of the box after her name, right?

9 : 5 1 A M 14 MR. SHAHID: So I can't even present to the jury a
9 : 5 1 A M 15 potential witness who may have information to exonerate my
9 : 5 1 A M 16 client, which is even far worse than her taking the stand and
9 : 5 1 A M 17 not being able to testify.

9 : 5 1 A M 18 THE COURT: So -- but you agree that you can't call a
9 : 5 1 A M 19 witness that you know -- bring her into court, swear her, sit
9 : 5 1 A M 20 her in the witness stand -- that you know is going to take the
9 : 5 2 A M 21 Fifth Amendment? You'd agree that can't do that just for show?
9 : 5 2 A M 22 I guess you could say yes or no and then explain.

9 : 5 2 A M 23 MR. SHAHID: I'm going to say no, for this reason:
9 : 5 2 A M 24 Because she may answer some questions that I'm able to ask her
9 : 5 2 A M 25 about that she may not take the Fifth Amendment on.

9 : 5 2 A M 1 **MR. SCHOEN:** We would just ask that we figure that
9 : 5 2 A M 2 out now before the jury is in here rather than waiting until
9 : 5 2 A M 3 the jury arrives and having that show affect their
9 : 5 2 A M 4 deliberations.

9 : 5 2 A M 5 **THE COURT:** So you just want to bring her up and see
9 : 5 2 A M 6 what she's going to do? Okay.

9 : 5 2 A M 7 **MR. GEEL:** Your Honor, if I could briefly.

9 : 5 2 A M 8 **THE COURT:** Sure.

9 : 5 2 A M 9 **MR. GEEL:** I'll just note my objection if that's what
9 : 5 2 A M 10 the Court intends to do. I don't think anyone has the
9 : 5 2 A M 11 authority to do that. I just don't think either party has the
9 : 5 2 A M 12 right to ask that.

9 : 5 2 A M 13 **THE COURT:** All right. Well, I'm going to do some
9 : 5 2 A M 14 research. We may do that, we may do it at lunch, we do it
9 : 5 2 A M 15 tomorrow morning or something like that, but you got some
9 : 5 2 A M 16 pretty interesting evidentiary questions. Number 1, can she be
9 : 5 3 A M 17 compelled to do anything as a Defendant? Number 2, is she
9 : 5 3 A M 18 unavailable? And, therefore, number 3, I mean, the Government
9 : 5 3 A M 19 could resolve it by dismissing the charges with prejudice, and
9 : 5 3 A M 20 then she's full game for anybody, and number 4 -- I don't know
9 : 5 3 A M 21 what number 4 is, but -- so we'll take a look at -- we'll do
9 : 5 3 A M 22 some research on that during the first part of the trial, but
9 : 5 3 A M 23 do not mention her name, either one of you, in the opening.
9 : 5 3 A M 24 She may or may not come as a witness.

9 : 5 3 A M 25 **MR. SCHOEN:** As a witness, yes, Your Honor.

9 : 5 3 A M 1 MR. SHAHID: We cannot mention anything about her
9 : 5 3 A M 2 name as witness?

9 : 5 3 A M 3 THE COURT: She's not a witness yet. You can't go up
9 : 5 3 A M 4 and say, "Ms. Ellison is going to come and testify" --

9 : 5 3 A M 5 MR. SHAHID: Right. Right.

9 : 5 3 A M 6 THE COURT: Okay. You may mention that she's a
9 : 5 3 A M 7 witness, whether she's called or not. There's a lot of people
9 : 5 3 A M 8 who are witnesses who are not called, okay? So anything else?

9 : 5 3 A M 9 MR. SHAHID: Something you want to say? Say it. If
9 : 5 4 A M 10 you got something you want to tell the Judge, it's your chance
9 : 5 4 A M 11 to do it. No.

9 : 5 4 A M 12 THE COURT: Okay. Anything else, Mr. Schoen?

9 : 5 4 A M 13 MR. SHAHID: Judge, the other issue that I think we
9 : 5 4 A M 14 brought out, and I think we got it cleared up, there was a
9 : 5 4 A M 15 video on the 2014 stop, and the Government had made
9 : 5 4 A M 16 representations on Friday about playing part of it, but I think
9 : 5 4 A M 17 we got that straightened out. They will stop the tape at the
9 : 5 4 A M 18 time of his in custody.

9 : 5 4 A M 19 MS. HENDERSON: Your Honor, I just wanted to make
9 : 5 4 A M 20 sure there's no witnesses in here that need to be sequestered.
9 : 5 4 A M 21 I'm not sure who all of these people are in the back.

9 : 5 4 A M 22 THE COURT: Do you have any witnesses back there,
9 : 5 4 A M 23 Mr. Shahid?

9 : 5 4 A M 24 MR. SHAHID: I don't see any. No, sir.

9 : 5 4 A M 25 THE COURT: If they're witnesses, they got to stay

9 : 5 4 A M 1 outside. I guess that's kind of a motion to sequester the
9 : 5 4 A M 2 witnesses?

9 : 5 4 A M 3 MS. HENDERSON: Well, yes, Your Honor. Before we
9 : 5 4 A M 4 start talking about the 2014 incident, there is a witness in
9 : 5 4 A M 5 the 2014 incident that was subpoenaed, so I don't know if he's
9 : 5 4 A M 6 in the courtroom, and so I just want to -- if he is, we're
9 : 5 4 A M 7 moving to sequester.

9 : 5 5 A M 8 THE COURT: Okay. Who is that?

9 : 5 5 A M 9 MS. HENDERSON: Maurice White.

9 : 5 5 A M 10 THE COURT: Maurice White in the courtroom? Nobody.
9 : 5 5 A M 11 Good. Good.

9 : 5 5 A M 12 MS. HENDERSON: But, yes, Your Honor. Mr. Shahid is
9 : 5 5 A M 13 correct. I had given him some time stamps that we might play,
9 : 5 5 A M 14 but we do not intend to go beyond his being placed in custody
9 : 5 5 A M 15 in the back of the patrol car, because there's several
9 : 5 5 A M 16 references from dispatch about him being wanted for murder and
9 : 5 5 A M 17 stuff like that, so out of an abundance of caution, we're not
9 : 5 5 A M 18 going to play that.

9 : 5 5 A M 19 THE COURT: Okay. And that's agreeable with you,
9 : 5 5 A M 20 right, Mr. Shahid?

9 : 5 5 A M 21 MR. SHAHID: That's -- yes.

9 : 5 5 A M 22 THE COURT: That's what you wanted?

9 : 5 5 A M 23 MR. SHAHID: That was sort of my concern.

9 : 5 5 A M 24 THE COURT: Okay.

9 : 5 5 A M 25 MR. SHAHID: When I went back and reviewed the tape

9 : 5 5 A M 1 again, about some of the comments being made that are outside
9 : 5 5 A M 2 of I think their intent.

9 : 5 5 A M 3 THE COURT: So you're all right with that?

9 : 5 5 A M 4 MS. HENDERSON: Are you still going objecting to that
9 : 5 5 A M 5 exhibit with that in mind?

9 : 5 5 A M 6 MR. SHAHID: The tape itself?

9 : 5 5 A M 7 MS. HENDERSON: Yeah.

9 : 5 5 A M 8 MR. SHAHID: Yeah. I just wanted to make sure --

9 : 5 5 A M 9 MS. HENDERSON: I'm with you.

9 : 5 5 A M 10 MR. SHAHID: Sorry, Judge. Just making sure we're on
9 : 5 5 A M 11 the same page.

9 : 5 5 A M 12 THE COURT: No problem. Anything else?

9 : 5 6 A M 13 MR. SHAHID: I think that's it right now.

9 : 5 6 A M 14 THE COURT: All right. Mr. Geel, why don't you and
9 : 5 6 A M 15 your client leave, but be able -- we may need to get in touch
9 : 5 6 A M 16 with you. She may need to come back, okay?

9 : 5 6 A M 17 MR. GEEL: Just -- it'll be -- we'll accommodate
9 : 5 6 A M 18 whatever the Court needs to do. We can be available tomorrow
9 : 5 6 A M 19 morning at 9:00, Wednesday morning at 9:00. My client's
9 : 5 6 A M 20 schedule, that's the easiest.

9 : 5 6 A M 21 THE COURT: All right. Why don't you plan on coming
9 : 5 6 A M 22 tomorrow morning at 9:00 unless we tell you not to.

9 : 5 6 A M 23 MR. GEEL: Okay.

9 : 5 6 A M 24 THE COURT: Great.

9 : 5 6 A M 25 MR. GEEL: Thank you.

9 : 5 6 A M 1 **MR. SCHOEN:** That may necessitate us breaking early,
9 : 5 6 A M 2 which we don't object to, but I don't know that our evidence is
9 : 5 6 A M 3 going to take more than a day.

9 : 5 6 A M 4 **THE COURT:** Okay. That means there's another day for
9 : 5 6 A M 5 the defense evidence, and so she'll be here at 9:30 in the
9 : 5 6 A M 6 morning, okay? All right.

9 : 5 6 A M 7 Anything else? How many jurors we got, Catina?

9 : 5 6 A M 8 **COURTROOM DEPUTY:** We're still waiting on two.

9 : 5 6 A M 9 **THE COURT:** We're still waiting on two jurors, so
9 : 5 7 A M 10 we'll be at ease until they show up.

11 (Recess from 9:57 a.m. to 10:10 a.m.)

10 : 1 0 A M 12 **THE COURT:** Take your seats. Thank you. Okay.
10 : 1 0 A M 13 Anything before we bring the jury in? Anything before we bring
10 : 1 0 A M 14 the jury in?

10 : 1 0 A M 15 **MR. SCHOEN:** No, Your Honor.

10 : 1 0 A M 16 **THE COURT:** Y'all ready to go, Mr. Shahid? Anything?
10 : 1 2 A M 17 You want to bring the jury?

10 : 1 2 A M 18 **MR. SHAHID:** Yes, sir, bring the jury in.

10 : 1 2 A M 19 **MR. SCHOEN:** You want to put that on the record?

10 : 1 2 A M 20 **THE COURT:** Yeah.

10 : 1 2 A M 21 **MR. SCHOEN:** Judge, and he indicated he wanted to
10 : 1 2 A M 22 plead, and I told him he could plead to Counts 1 and 2 at this
10 : 1 2 A M 23 point. That's the conspiracy and the first gun count, and my
10 : 1 2 A M 24 understanding is he's declined that offer.

10 : 1 2 A M 25 **MR. SHAHID:** My understanding, Judge, was the new

1 offer was a plea to Count 1 and 2, and the Government was still
2 going to seek the maximum penalty which would expose him to 15
3 years. He is willing to plead guilty to Count 1 right now.

4 THE COURT: Okay. So it's my understanding that
5 there's been a -- more plea negotiations, and the Government
6 has offered the Defendant -- allow the Defendant to plead
7 guilty to Counts 1 and 2 and were going to ask for a 15-year
8 sentence. Whatever the guidelines are, the guidelines are.
9 would they be less than 15?

10 MR. SCHOEN: Probably -- it depends on a lot of
11 different things.

12 THE COURT: All right. And that you've discussed
13 that with Mr. Fishburne, and Mr. Fishburne has declined that
14 offer; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Thank you. All right. Bring them
17 in.

18 (Jury in at 10:15 a.m.)

19 THE COURT: Good morning, ladies and gentlemen of the
20 jury. Welcome back. We're going to commence the trial of the
21 United States of America v. Quentin John Fishburne at this
22 time, so I would ask the clerk to -- y'all can pass out those
23 pads and pencils. If you want to take notes, you're welcome to
24 do so. If you don't want to, you don't have to, but I'll ask
25 the clerk to go ahead and swear you as jurors in this case, if

10:16 AM 1 you don't mind.

10:16 AM 2 COURTROOM DEPUTY: Ladies and gentlemen, raise your
10:16 AM 3 right hand and be sworn, please.

10:16 AM 4 (Jury sworn.)

10:16 AM 5 COURTROOM DEPUTY: Thank you.

10:16 AM 6 THE COURT: Y'all in the back row may want to switch,
10:16 AM 7 because this is where the witness stand is, so just move one
10:16 AM 8 this way. That's good. You can see the action better from
10:16 AM 9 there. Okay. Y'all can take your seats now.

10:17 AM 10 Okay. Members of the jury, I'm now going to
10:17 AM 11 give you some preliminary instructions to guide your
10:17 AM 12 participation in this trial. As jurors it will be your duty to
10:17 AM 13 find the facts from the evidence that will be presented to you.
10:17 AM 14 You and you alone are the -- will decide the disputed issues of
10:17 AM 15 fact in this case. I'll decide all questions of law that arise
10:17 AM 16 during the trial. You will then have to apply those facts to
10:17 AM 17 the law as I will give it to you at the conclusion of the
10:17 AM 18 trial, and you must follow that law whether you agree with it
10:17 AM 19 or not, and you must not be influenced by any personal likes or
10:17 AM 20 dislikes, opinions, prejudices or sympathy. This means that
10:17 AM 21 you must decide this case solely on the evidence before you
10:17 AM 22 according to the law.

10:17 AM 23 Because you'll be called upon to decide the
10:17 AM 24 facts of the case, you should give careful attention to the
10:18 AM 25 testimony and evidence presented for your consideration during

10:18 AM 1 this trial, but you should keep an open mind and should not
10:18 AM 2 form or state any opinion about this case one way or the other
10:18 AM 3 until you've heard all the evidence and had the benefit of the
10:18 AM 4 closing arguments of the lawyers as well as my final
10:18 AM 5 instructions on the applicable law.

10:18 AM 6 Now, during the trial you must not discuss the
10:18 AM 7 case in any manner among yourselves or with anyone else, and
10:18 AM 8 you must not permit anyone to attempt to discuss it with you or
10:18 AM 9 in your presence. The reason for these cautions, of course,
10:18 AM 10 lies in the fact that it will be your duty to decide this case
10:18 AM 11 only on the basis of the testimony and the evidence presented
10:18 AM 12 during this trial without consideration of any other matters
10:18 AM 13 whatsoever.

10:18 AM 14 Now, from time to time during the trial, I may
10:18 AM 15 be called upon to make rulings of law on motions or objections
10:18 AM 16 made by the lawyers. You should not infer or conclude from any
10:18 AM 17 ruling that I might make that I have any opinions on the merits
10:18 AM 18 of the case favoring one side or the other. If I sustain an
10:18 AM 19 objection to a question that goes unanswered, you should not
10:18 AM 20 speculate on what answer might have been given, nor should you
10:19 AM 21 draw any inferences or conclusions from the question itself.
10:19 AM 22 Also during the trial, it may be necessary for me to confer
10:19 AM 23 with the lawyers out of your hearing concerning questions of
10:19 AM 24 law, procedure, or evidence. On some of these occasions, you
10:19 AM 25 may be excused from the courtroom for your convenience, but

1 everybody is going to try to limit such interruptions as much
2 as possible, but you should remember at all times the
3 importance of the matter you're here to determine and should be
4 patient, even though the case may seem to be going slowly.

5 In that regard, we expect the case to take
6 approximately two to three days. Everybody is going to make
7 every effort to expedite the trial whenever possible.
8 Schedule, y'all came in at 10:00 this morning, so you know how
9 to get down here and where to park. If it's -- if you want to,
10 we'll start at 9:30 tomorrow morning rather than 10:00. We
11 will have a mid-morning break. We'll have a mid-afternoon
12 break. We'll have a lunch break, and we'll quit about 6:00,
13 and the reason we don't quit at 5:00 is because you'll be
14 caught in Charleston traffic for an hour, so you might as well
15 be here and listen to testimony, and then you'll skip the rush
16 hour, okay?

17 Now, in order that you might better understand
18 the nature of the decisions you'll be asked to make and how you
19 should go about making them, I'm going to give you some
20 preliminary instructions at this time concerning some of the
21 rules of law that will apply. The preliminary instructions
22 that I'm giving you now will not cover all the rules of law
23 applicable to this case.

24 As I stated before, I'll instruct you fully at
25 the end of the trial just before you're asked to determine your

1 verdict. we'll probably restate at that time some of the rules
2 I'm going to tell you about now, but please note these
3 instructions are intended to be considered as a whole and not
4 singled out apart from the rest. At the close of the trial,
5 you each will have a copy of my final charge on the law. You
6 can read along with me, okay?

7 I first want to caution you that an indictment
8 in a criminal case is merely an accusatory paper that states
9 the charges to be determined at the trial, but it is not
10 evidence against Mr. Fishburne. Indeed, Mr. Fishburne has
11 entered a plea of not guilty and is presumed by the law to be
12 innocent of these charges. The Government has the burden of
13 proving him, Mr. Fishburne, guilty beyond a reasonable doubt,
14 and if it fails to do so, you must acquit him.

15 Now, the Indictment in this case contains three
16 counts against Mr. Fishburne. Counts 1 and 5 are -- charge him
17 with a felon in possession of a firearm. Title 18 USC Section
18 922(g)(1) provides in relevant part that, "It shall be unlawful
19 for any person who has been convicted in any court of a crime
20 punishable by imprisonment for a term exceeding one year to
21 possess a firearm or ammunition."

22 Counts 1 and 5 charge Mr. Fishburne with
23 violating Section 922(g) of Title 18 on two separate occasions,
24 March 31st, 2018 and May 2nd, 2014, respectively.

25 In order for you to find Mr. Fishburne guilty of

1 this charge, the Government must prove the following elements
2 beyond a reasonable doubt as to each count:

3 Number 1, that Mr. Fishburne had previously been
4 convicted of a crime punishable by a term of imprisonment
5 exceeding one year; number 2, that Mr. Fishburne possessed the
6 firearm or ammunition; number 3, that the firearm or ammunition
7 had traveled in interstate or foreign commerce at some point
8 during its existence; and Number 4, that Mr. Fishburne did so
9 knowingly; that is, Mr. Fishburne must know that the item was a
10 firearm or ammunition, and its possession must be voluntary and
11 intentional.

12 Now, the parties have stipulated to the
13 existence of the first and third elements, meaning the
14 Government has satisfied its burden of proving those elements
15 beyond a reasonable doubt. However, the Government still must
16 prove elements 2 and 4 beyond a reasonable doubt.

17 If you find from your consideration of all the
18 evidence that the Government has proven each of these elements
19 beyond a reasonable doubt as to each count, then you should
20 find Mr. Fishburne guilty of Counts 1 and 5. On the other
21 hand, if you find from your consideration of all the evidence
22 that the Government has not proven each and every one of those
23 elements beyond a reasonable doubt, then you should find
24 Mr. Fishburne not guilty of Counts 1 and 5.

25 Count 2 is conspiracy to sell or transfer

1 firearms to a felon or make false statements in furtherance of
2 the conspiracy.

3 Title 18 USC Section 922(d) provides in relevant
4 part that, "It shall be unlawful for a person to conspire to
5 sell or otherwise transfer a firearm or ammunition to a person
6 who has been convicted in any court of a crime punishable by
7 imprisonment for a term exceeding one year." Title 18 USC
8 Section 922(a)(6) provides in relevant part that, "It shall
9 unlawful for a person to conspire to make a false statement to
10 a licensed firearms dealer in connection with the acquisition
11 of a firearm."

12 Count 2 charges that beginning at a time unknown
13 and continuing through August 15th, 2018, Mr. Fishburne
14 unlawfully, knowingly and willfully did conspire, combine,
15 confederate and agree together with other persons, known and
16 unknown, to execute a scheme to knowingly and willfully possess
17 with intent -- firearm -- willfully, excuse me -- sell or
18 otherwise transfer firearms and ammunition to persons who have
19 been convicted of a crime punishable by imprisonment for a term
20 of one year, make false -- and make false statements to
21 licensed firearm dealers in connection with the acquisition of
22 the firearms.

23 In order for you to find Mr. Fishburne guilty of
24 this charge, the Government must prove each of the following
25 elements beyond a reasonable doubt: Number 1, that two or more

1 persons entered into an unlawful agreement starting at a time
2 unknown and continuing through August 18th -- August 15th, 2018
3 to either number -- A, commit the crime of selling firearms and
4 ammunition to persons who have been convicted of a crime
5 punishable by imprisonment for a term exceeding one year; or B,
6 commit the crime of making false statements to licensed
7 firearms dealers in connection with the acquisition of
8 firearms; and Number 2, that Mr. Fishburne knew of the
9 conspiracy; and Number 3, that Mr. Fishburne knowingly and
10 voluntary became a part of that conspiracy.

11 If you find from your consideration of all of the
12 evidence that the Government has proven each of these elements
13 beyond a reasonable doubt, then you should find Mr. Fishburne
14 guilty of Count 2. If, on the other hand, you find from your
15 consideration of all the evidence that the Government has
16 failed to prove any one of the elements beyond a reasonable
17 doubt, then you should find Mr. Fishburne not guilty of
18 Count 2.

19 Now, what is conspiracy? Under the law,
20 conspiracy is a kind of partnership in criminal purposes.
21 willful participation in such a scheme is sufficient to
22 complete the offense of conspiracy, even though it's not
23 been -- even though the ultimate criminal object or objects of
24 the conspiracy are not accomplished or carried out. In order
25 to establish a conspiracy offense, it is not necessary for the

1 Government to prove that the members of the conspiracy had
2 entered into any formal type of agreement. The existence of a
3 conspiratorial agreement need not be proved by direct evidence,
4 but may be inferred from the facts and circumstances of the
5 case.

6 In your consideration of the evidence, you
7 should determine whether or not Mr. Fishburne knowingly took
8 part in a conspiracy to sell firearms and ammunition to persons
9 who have been convicted of a crime punishable by imprisonment
10 for a term exceeding one year existed, and whether
11 Mr. Fishburne knowingly took part in a conspiracy to make false
12 statements to licensed firearm dealers in connection with the
13 acquisition of firearms.

14 If the Government proves the necessary elements
15 with respect to either conspiracy, you should find
16 Mr. Fishburne guilty of Count 2.

17 Now, what's the evidence in the case? In
18 determining the facts of the case, you should consider the
19 following elements: The sworn testimony of the witnesses both
20 on direct and cross-examination regardless of who called the
21 witness; any exhibits that have been received into evidence and
22 that you'll have back in your jury room when you deliberate;
23 and number 3, any facts which all the lawyers have agreed or
24 stipulated.

25 Certain things are not evidence, and you may not

1 consider them when deciding what the facts are. I'll list them
2 for you now. The arguments and the statements by the lawyers
3 are not evidence. The lawyers are not witnesses. What they've
4 said in their opening statements, closing arguments and at
5 other times is intended to help you interpret the evidence, but
6 it is not evidence. If the facts as y'all remember them are
7 different from the way the lawyers have stated them, your
8 memory of them controls.

9 Questions and objections by lawyers are not
10 evidence. Attorneys have a duty to their clients and to the
11 Court to object when they believe a question is improper under
12 our rules of evidence. You should not be influenced by the
13 objection or by my ruling on it. If the objection is
14 sustained, you should disregard the question. If it was
15 overruled, treat the answer as any other.

16 Testimony that might be excluded or stricken or
17 that you've been asked to disregard is not evidence and must
18 not be considered.

19 In addition, if that testimony or exhibits have
20 been received only for a limited purpose, you must follow the
21 limiting instructions that I will give you, and, of course,
22 anything you may have seen or heard when court is not in
23 session is not evidence. You are to decide this case solely on
24 the evidence received at this trial.

25 Now, because the Government has the burden of

1 proof, it will go forward and present its testimony and
2 evidence first. After the Government finishes or rests what we
3 call its case in chief, Mr. Fishburne may call witnesses and
4 present evidence if he wishes to do so. However, you will
5 remember that the Constitution and the laws of the United
6 States do not require a defendant to prove his innocence or
7 produce any evidence at all, and no inference whatsoever may be
8 drawn from the decisions of Mr. Fishburne not to testify if he
9 so choses.

10 Now, as you listen to the testimony, you should
11 remember that you all are the sole judges of the credibility or
12 believability of each witness and the weight to be given to his
13 or her testimony. You may believe or not believe all or any
14 part of any witness's testimony. In making that decision,
15 whether you believe or disbelieve any witness, you should
16 consider his or her relationship to the Government or to
17 Mr. Fishburne; his or her interest, if any, in the outcome of
18 the case; his or her manner of testifying; his or her
19 opportunity to observe or acquire knowledge concerning the
20 facts about which the witness testified; his or her candor,
21 fairness and intelligence; and the extent to which the witness
22 has been supported or contradicted by other credible evidence.

23 Now, I've provided each of you with notepads and
24 pencils, and you are permitted to take notes during the trial.
25 If you weren't, why would I give you notepads and pencils? If

10:28 AM 1 you'd like to take notes, you may. On the other hand, the
10:28 AM 2 courts do not require you to take notes if you don't want to,
10:28 AM 3 and that will be left up to each of you individually. If you
10:28 AM 4 do decide to take notes, be careful not to get so involved in
10:29 AM 5 your note-taking that you become distracted from the ongoing
10:29 AM 6 proceedings. Also your notes should be used only as aids to
10:29 AM 7 your memory, and if your memory should later differ from your
10:29 AM 8 notes, you should rely upon your memory and not your notes. If
10:29 AM 9 you don't take notes, you should rely on your own independent
10:29 AM 10 recollection or memory of what the testimony was, and you
10:29 AM 11 should not be unduly influenced by the notes of the other
10:29 AM 12 jurors. Notes are not entitled to any greater weight than the
10:29 AM 13 recollection or impression of each juror as to what the
10:29 AM 14 testimony was.

10:29 AM 15 As I said, you can take notes, but if you do,
10:29 AM 16 you can leave them in the jury room or turn them upside down in
10:29 AM 17 your chair at night. Remember, they're for your own personal
10:29 AM 18 use, and they're not to be given or read to anyone else.

10:29 AM 19 You'll notice that the court reporter is making
10:29 AM 20 a complete record of the trial and all of the testimony that is
10:29 AM 21 being received. However, you should not expect to have a
10:29 AM 22 typewritten transcript of the trial available to you during
10:29 AM 23 your deliberations because it is not normally completed until
10:29 AM 24 long after the trial itself. You must therefore rely on your
10:29 AM 25 own individual and collective memories concerning the

1 testimony.

2 On the other hand, as I said, any papers or
3 other tangible exhibits received into evidence during the trial
4 will be available during your deliberations. On some occasions
5 during the trial, the exhibits may be handed to you for your
6 brief inspection in the jury box. Others will not, but don't
7 be concerned. As I said, you'll get to see and inspect all the
8 exhibits that are received into evidence at the end of the
9 case.

10 Now, a few words about your conduct as jurors. You
11 as jurors must decide this case solely on the evidence
12 presented here within the four walls of this courtroom. This
13 means that during trial you must not conduct any individual
14 research about the case, the matters in the case, and the
15 individuals involved in the case. In other words, you should
16 not consult dictionaries or reference material, search the
17 internet, websites, blogs, or use any other electronic tools to
18 obtain information about this case or to help you decide the
19 case.

20 Please do not try to find information from any source
21 outside the confines of this courtroom. Until you retire to
22 deliberate, you may not discuss the case with anyone, even your
23 fellow jurors. Don't form any opinion until all the evidence
24 is in. Keep an open mind until you start your deliberations at
25 the end of the case. After you retire to deliberate, you may

1 begin discussing the case with your fellow jurors, but you
2 can't discuss the case with anyone else until you've returned a
3 verdict or the case is over.

4 Now, I know everybody uses smartphones. That's
5 another tool of technology. As I said, you must not talk to
6 anyone at any time about the case or use these tools to
7 communicate electronically with anyone about this case. This
8 includes your family and friends. You also may not communicate
9 with anyone about the case on your cell phone or through email
10 or text messaging or Twitter or LinkedIn or YouTube, and you
11 should not use any similar technology or social media, even if
12 I've not specifically mentioned it here. I would ask you to
13 inform me if you become aware of another juror's violation of
14 the rules.

15 Now we'll begin the trial by affording the
16 lawyers for each side an opportunity to make opening statements
17 to you which may explain the issues in the case and summarize
18 the facts they expect the evidence will show. After all the
19 testimony and evidence has been presented, the lawyers will
20 have another opportunity to address you and make final
21 arguments.

22 The statements by the layers made now as well as
23 the arguments at the end of the trial are not evidence in the
24 case or instructions on the law. However, these statements and
25 arguments are intended to help you understand the evidence, the

1 issues and disputes you'll be called upon to decide, as well as
2 the positions taken by each side. So I ask you now to give the
3 lawyers your close attention to opening statements.

4 Mr. Schoen?

5 MR. SCHOEN: Your Honor, could we have a brief
6 sidebar before I proceed with opening?

7 THE COURT: Sure.

8 (At sidebar on the record.)

9 MR. SCHOEN: Your Honor, I believe the defense has
10 stipulated to elements 1, 2 and 3 of the -- that we have to
11 prove, and I believe you advised the jury that I have to prove
12 2 and 4.

13 THE COURT: I'll clear it up in closing instructions.

14 MR. SCHOEN: Okay. Am I okay to say that in the
15 opening?

16 THE COURT: Do you agree with that?

17 MR. SHAHID: We stipulated to three of the elements.

18 THE COURT: Okay.

19 MR. SHAHID: He is a felon, traveled in interstate
20 commerce.

21 THE COURT: Okay. So which one -- which element do
22 you have to prove? You have to prove what, 4?

23 MR. SCHOEN: We have to prove 4, yes.

24 THE COURT: Okay. I'll just tell them.

25 (End of discussion at sidebar.)

1 **THE COURT:** Okay. I misspoke when I gave the
2 elements of the felon in possession of a firearm, which is
3 Counts 1 and 5. There are four elements. Number 1, that
4 Mr. Fishburne had previously been convicted of a crime
5 punishable by a term of imprisonment exceeding one year.
6 Number 2, that Mr. Fishburne possessed the firearm and
7 ammunition. Number 3, that the firearm and ammunition had
8 traveled in interstate and foreign commerce at some point. And
9 Number 4, Mr. Fishburne did so knowingly; that is,
10 Mr. Fishburne must know the item was a firearm or ammunition
11 and the possession must be voluntary. Mr. Fishburne has
12 stipulated to the existence of the first, third, and fourth
13 elements -- first, second, and third?

14 **MR. SCHOEN:** First, second, and third.

15 **THE COURT:** First, second, and third elements.
16 Excuse me. That is, that he has previously been convicted, he
17 possessed the firearm, and the firearm had traveled in
18 interstate or foreign commerce. So the Government would have
19 to prove element 4; that is, that Mr. Fishburne did so
20 knowingly, that Mr. Fishburne knew the item was a firearm, and
21 that the possession must be voluntary and intentional.

22 So that clears that up. Thank you. Okay.
23 Mr. Schoen?

24 **MR. SCHOEN:** May it please the Court.

25 **THE COURT:** Sure.

10:35 AM 1 MR. SCHOEN: Good morning, ladies and gentlemen. My
10:35 AM 2 name is Chris Schoen. Along with my co-counsel Carra
10:35 AM 3 Henderson, we represent the United States.

10:35 AM 4 I'm going to give a brief opening statement.
10:35 AM 5 Three crime scenes, two guns, one buyer, and zero reasonable
10:35 AM 6 doubt. This is a case about a felon who was determined to be
10:35 AM 7 armed. Under federal law, felons are not allowed to have guns.
10:36 AM 8 They can't buy them. They can't possess them. They can't get
10:36 AM 9 somebody else to give them to them. But this particular felon,
10:36 AM 10 Quentin John Fishburne, the Defendant in this case, was
10:36 AM 11 determined to break that law with the help of his girlfriend.
10:36 AM 12 Here's what happened. Let's talk about crime scene one, gun
10:36 AM 13 one.

10:36 AM 14 It's May 2nd of 2014. Mr. Fishburne is driving
10:36 AM 15 his wife's Lincoln sedan, and he's got another person with him
10:36 AM 16 in the passenger's seat. He's speeding. A deputy with the
10:36 AM 17 Colleton County Sheriff's Department who sees him speeding
10:36 AM 18 tries to stop his car. Instead of stopping, Mr. Fishburne
10:36 AM 19 takes off at high speed. We're going to show you footage of
10:36 AM 20 the high speed chase that resulted. You're going to be able to
10:36 AM 21 see that car swerving across the road, passing other cars,
10:36 AM 22 driving 80, 90 miles an hour on country roads. You're also
10:36 AM 23 going to hear from the deputy who pursued Mr. Fishburne that
10:37 AM 24 day. He's going to tell you that he saw both occupants of the
10:37 AM 25 vehicle waving what he believed to be guns. You're going to

1 see that the car pulls off on a dirt road and that two men jump
2 out of the side of the car and run into the woods.

3 Mr. Fishburne doesn't get very far. The deputy takes him down
4 and arrests him.

5 And what did they find when they searched that
6 vehicle? Two loaded guns on the floorboard of the car.

7 Now, one of those guns was a .380, and it had
8 been reported stolen. We're actually not concerned about that
9 gun in this particular case. It's the other gun. It's a
10 9 millimeter Jimenez JA Nine. That's the gun that we're
11 interested in. That's what we're going to refer to as the
12 first gun or gun one. That gun had been purchased by a woman
13 named Renata Shontel Ellison. She purchased that gun in 2013,
14 the same year that she began a romantic relationship with
15 Mr. Fishburne. She's Mr. Fishburne's girlfriend. Not to be
16 confused with Mr. Fishburne's wife. That's another woman named
17 Kenyetta Fishburne. The girlfriend bought the gun. The wife
18 owned the car.

19 What you're going to hear is that six months
20 after this chase, Ms. Ellison, the girlfriend, actually went to
21 the Colleton County Sheriff's Office and got them to give her
22 the gun back. She claimed it. Now, before she did that, in
23 September of 2014, she went out and she bought another gun, a
24 Smith & Wesson .40 caliber M&P Shield. That's what we're going
25 to call gun two, the second gun. Pay attention to that gun.

10:38 AM 1 Let's talk about crime scene two, gun two. It's
10:38 AM 2 March 31st of 2018. Mr. Fishburne this time is driving his
10:39 AM 3 mom's car, and this time he is the only one in the vehicle. He
10:39 AM 4 pulls up to a safety checkpoint in the city of Walterboro where
10:39 AM 5 Walterboro police officers are checking licenses and
10:39 AM 6 registrations. He'll only roll down the window just a couple
10:39 AM 7 of inches, but that's enough for the officer who's doing the
10:39 AM 8 check to develop probable cause to search the vehicle. So he
10:39 AM 9 asked Mr. Fishburne to pull the car over so he can search it.

10:39 AM 10 And what you're going to hear is that
10:39 AM 11 Mr. Fishburne almost immediately said, "Anything you find in
10:39 AM 12 here, it's not mine." Of course, what did the officer find
10:39 AM 13 when they searched the car right under the seat where
10:39 AM 14 Mr. Fishburne was sitting? A loaded .40 caliber Smith & Wesson
10:39 AM 15 M&P Shield, the same gun that was purchased by his girlfriend,
10:39 AM 16 Renata Ellison, just a few months after he was arrested with
10:39 AM 17 her other gun.

10:39 AM 18 As before, you're going to hear Ms. Ellison
10:40 AM 19 didn't own that car. Ms. Ellison wasn't in the car, and the
10:40 AM 20 gun had not been reported stolen. So now you have two
10:40 AM 21 instances where the same felon has been caught in vehicles
10:40 AM 22 belonging to members of his family with guns purchased by his
10:40 AM 23 girlfriend. Two guns, two crime scenes. Remember I told you
10:40 AM 24 that there was a third? One last twist.

10:40 AM 25 You're going to hear evidence that the

1 .40 caliber Smith & Wesson M&P Shield, the second gun that
2 Ms. Ellison purchased, the shell casings from that gun match a
3 shooting, a 2015 shooting from Walterboro. Furthermore, the
4 Government is going to show you evidence that Mr. Fishburne was
5 present at the scene of that shooting. Three crime scenes, two
6 guns, one purchaser, zero reasonable doubt.

7 Let's be very clear about what it is that the
8 Government has to prove and what it is we've charged. Because
9 while this case involves a shooting, it involves a car chase,
10 what we charge is actually much simpler, and that's what the
11 Judge instructed you about. We charged a conspiracy, which is
12 essentially this illegal agreement between Mr. Fishburne,
13 Ms. Ellison and others, to illegally transfer firearms to
14 felons or to straw purchase. We've also charged felon in
15 possession of a firearm from these two specific dates, the two
16 car stops when he's running from the police, when that officer
17 sees the gun in the hands of both occupants, and that other
18 time when he's the only one in the car and his girlfriend's gun
19 is right under his seat.

20 And the key question is did he knowingly possess
21 the gun in those two instances? That's it.

22 Three crime scenes, two guns, zero reasonable
23 doubt. At the end of today's trial, my co-counsel will stand
24 before you, and she'll ask you for a verdict compelled by the
25 facts, a verdict of guilty. Thank you.

10 : 4 2 A M 1 THE COURT: Thank you, Mr. Schoen. Mr. Shahid?

10 : 4 2 A M 2 MR. SHAHID: May it please the Court. Good morning.

10 : 4 2 A M 3 If you think that a person has a prior conviction of being a
10 : 4 2 A M 4 felon is guilty of a crime, raise your hand. If you think that
10 : 4 2 A M 5 a person illegally possessed a gun as charged by the Government
10 : 4 2 A M 6 is guilty of that charge, raise your hand. You took an oath a
10 : 4 2 A M 7 few moments ago, and the Judge instructed you on this, to
10 : 4 3 A M 8 listen to all of the evidence in this case, every bit of the
10 : 4 3 A M 9 evidence in this case. What's also very important in this case
10 : 4 3 A M 10 is that you listen to and observe what's not in evidence.

10 : 4 3 A M 11 My name is Peter Shahid. I'm a defense lawyer.
10 : 4 3 A M 12 I've been practicing law almost 40 years in this county in this
10 : 4 3 A M 13 courtroom. I'm going to introduce you to Mr. Fishburne.
10 : 4 3 A M 14 Mr. Fishburne? This is Quentin Fishburne. He is charged with
10 : 4 3 A M 15 these three separate counts of being a felon in possession of a
10 : 4 3 A M 16 firearm and with conspiracy. This is his day in court. Thank
10 : 4 3 A M 17 you, Quentin. Have a seat.

10 : 4 3 A M 18 As the Court read to you and stated to you, that
10 : 4 3 A M 19 there are four elements that the Government must prove. We
10 : 4 3 A M 20 have stipulated, which means we agree and Government doesn't
10 : 4 4 A M 21 have to prove anything else along those stipulations, those
10 : 4 4 A M 22 elements. Those elements include that there was a firearm, a
10 : 4 4 A M 23 gun; and that gun at some point in time moved from South
10 : 4 4 A M 24 Carolina to another state or from another state into South
10 : 4 4 A M 25 Carolina; that Mr. Fishburne was previously convicted of a

1 felony, and a felony charge means something that carries a
2 penalty of more than one year; and that he knew that he was a
3 person who had a previous conviction of more than one year.
4 We've agreed to those facts. We made the Government's case
5 simple.

6 I want you to pay attention, and when you go
7 back to your jury room to deliberate at the end of the case,
8 take this document. This is the Indictment that you'll have,
9 and pay attention very closely to what the Judge has instructed
10 you on on the elements and what's contained in the Indictment.
11 Because your obligation, your responsibility, is to find
12 Mr. Fishburne guilty only if, only if each and every one of
13 those elements are satisfied by a reasonable doubt.

14 This is not a game of horseshoes. This is not a
15 game of maybe, of could have, of would have or should have.
16 This is a solemn responsibility that you have to listen to the
17 evidence and be able to establish whether or not he is guilty
18 of each and every one of those elements of each count.

19 And the key word that you'll have in front of
20 you with the Indictment is this phrase, knowingly possessed.
21 Knowingly possessed.

22 Now, you've heard the Government's opening
23 statement to you in which they have admitted that on the two
24 occasions, one in 2018 and the other in 2014 when there was a
25 traffic stop engaged, that there was guns found in the car.

1 And the Government told you on the case in 2014, that was not
2 his car.

3 Now, how do you -- how do you establish
4 knowingly possessed? well, we've got the items in the car
5 are -- not his car. That would negate knowingly possessed.
6 The gun that was found that they're worried about and concerned
7 about and charging him with is not titled in his name. That
8 negates knowingly possessed.

9 Same thing with the first count, the 2018. The
10 car that he was operating was not his car. The gun that they
11 found is not his gun. It's not titled in his name.

12 That -- those facts, ladies and gentlemen, those
13 facts alone create what's called a reasonable doubt, a
14 reasonable doubt, and those -- the absence of the gun being
15 titled in his name, the absence of the vehicle used that he was
16 driving not being titled in his name is called reasonable
17 doubt, and then you would have an obligation based on those two
18 elements to find him not guilty.

19 He has to prove nothing. Mr. Fishburne has no
20 obligation at all to do anything. He has no obligation to take
21 this witness stand. He has no obligation to bring up witnesses
22 to testify, because the burden is on the Government to prove
23 each and every one of those elements beyond a reasonable doubt.

24 Likewise with the conspiracy. You heard the
25 Judge's opening comments about what a conspiracy is. A

1 conspiracy is at least two people. At least two people. It
2 can be more. It can be three. It can be 10. It could be a
3 hundred, but you've got to have at least two people to work
4 together in concert. That's like at a music concert, you got a
5 drummer playing and a person on a guitar playing instruments,
6 and they're playing the same song. They're playing the same
7 tune. They're in concert with one another. They're in sync
8 with one another. That's what conspiracy is. Conspiracy is
9 two or more people doing something in common that's illegal,
10 that's improper, that's against the law, but they have to be
11 connected together to do something with a common goal, in
12 concert, and think about a music concert when you think about
13 that. If one is playing one song and one is playing another,
14 they're not in concert. If one is off key, they will not be in
15 concert.

16 You've got to look at every one of the elements
17 that the Government is trying to establish in this conspiracy
18 about working together to lie to people, to get guns, and to
19 transfer guns to people who weren't supposed to be having them.
20 Listen the evidence and testimony along those lines, and the
21 Government has the obligation to prove each and every one of
22 those elements, that Mr. Fishburne and Ms. Ellison were acting
23 in concert together. That's just -- I suspect when you hear
24 that, you will find him not guilty of both of those counts, of
25 all three of those counts. That there was no conspiracy, and

1 that he did not knowingly possess.

2 I want to thank you for your service. This is
3 not easy. You will sit in judgment of another human being.
4 That's never easy. Lawyers have stood in front of this bar,
5 this jury bar, since this building was created in the late 19th
6 century. This building is one of the most historic buildings
7 we have in our city, in our state. Lawyers have stood in front
8 of juries like you before and heard from several witnesses over
9 here. This building and this courtroom is named after the man
10 in that portrait over there, Judge Blatt. He's one of the
11 longest serving jurists in the history of South Carolina. One
12 of the most historical cases ever decided in our country, Brown
13 v. Board of Education, was born in this very courtroom by the
14 man whose portrait is right behind you. That man took a lot of
15 courage, what he did and stood up against forces that wanted
16 him to do something as opposed to making sure that our schools
17 were segregated.

18 You may remember that when you were called for
19 jury duty, we were in another courtroom, and you may remember
20 the makeup of that courtroom. It's a beautiful room. This
21 courtroom was created and constructed in the late 19th Century
22 before we had these TV monitors and these nice speakers around
23 here that you see, probably before the days of air
24 conditioning, and what this building has and this courtroom
25 that the other courtrooms don't have are windows. You, ladies

1 and gentlemen, are the windows. You, ladies and gentlemen, are
2 the folks who let the light into the room. Your solemn
3 obligation is to listen to the testimony of the witnesses that
4 come up. Witnesses are witnesses, regardless if they are
5 people who are just normal citizens off the street or if
6 they're police officers. It makes no difference. You don't
7 weigh those person's testimony one against the other because
8 they happen to be a sworn police officer. You're going to have
9 to listen to what's not presented to you, what evidence is
10 lacking in this, and because of the sort of things that you are
11 lacking, that's going to give you a reason to find
12 Mr. Fishburne not guilty, because you as the windows are going
13 to let the light into this room and shine with truth of this
14 case.

15 If the Government can't satisfy their burden
16 beyond a reasonable doubt, your obligation is to find him not
17 guilty. Not exonerate him, not find him innocent, but to find
18 him not guilty.

19 This is a criminal case in which the elements
20 are very important and the bar is very high as to what the
21 Government's obligations are. If they can't reach that burden,
22 if they can't reach that bar, then you have to let that light
23 come in through these windows, and you have to find
24 Mr. Fishburne not guilty, and that's what we're asking you to
25 do. We're asking you to be the light that comes through these

1 windows, to listen to the testimony and find Mr. Fishburne not
2 guilty. Thank you.

3 THE COURT: Thank you, Mr. Shahid. You want to call
4 your first witness?

5 MS. HENDERSON: Your Honor, at this point the
6 Government would move several exhibits into evidence that are
7 not being objected to.

8 THE COURT: Okay. Sure.

9 MS. HENDERSON: We would move Government's Exhibit 1,
10 Government's Exhibit 3, Government's Exhibit 9, Government's
11 Exhibit 10, and Government's Exhibit 14 into evidence, Your
12 Honor. And at this time I would like to publish Government's
13 Exhibit 1. The rest of the exhibits will come in through other
14 witnesses.

15 THE COURT: Okay.

16 MS. HENDERSON: Exhibit 1 is the stipulations that
17 have been discussed, Your Honor. The first stipulation is that
18 Defendant, Quentin John Fishburne, began on December 4th, 1995
19 and continuing through March 31, 2018, had previously been
20 convicted of a felony punishable by a term exceeding one year,
21 and that Defendant, Quentin John Fishburne, has not been
22 pardoned for the above-referenced conviction, nor has the
23 conviction been expunged, nor have his civil rights to possess
24 a firearm been restored.

25 The second stipulation, that Defendant, Quentin

LANGENFELD - DIRECT EXAMINATION

1 John Fishburne, on December 4th, 1995 and continuing through to
2 March 31st, 2018, knew that he had previously been convicted of
3 a felony punishable by a term exceeding one year and was
4 therefore prohibited from possessing a firearm.

5 And the third stipulation, that the Smith &
6 Wesson Model M&P Shield .40 caliber firearm, serial number
7 HSR7417, the .40 caliber ammunition, and the Jimenez Model JA
8 Nine 9 millimeter firearm, serial number 239429, and
9 9 millimeter ammunition all traveled at some time in and
10 affecting interstate commerce, and all conform to the
11 definition of firearm and/or ammunition under federal law.

12 And, Your Honor, at this point the Government
13 would call Officer Delanty Langenfeld.

14 **THE COURT:** Okay.

15 **COURTROOM DEPUTY:** Please come forward to be sworn.
16 Place your left hand on the Bible and raise your right hand.

17 (Witness sworn.)

18 **COURTROOM DEPUTY:** Thank you. You may have a seat in
19 the witness box.

20 **DELANTY LANGENFELD,**
21 a witness called on behalf of the Government, being first duly
22 sworn, was examined and testified as follows:

23 **DIRECT EXAMINATION**

24 **BY MS. HENDERSON:**

25 **Q.** Good morning, Officer Langenfeld.

LANGENFELD - DIRECT EXAMINATION

10:56 AM 1 A. Good morning.

10:56 AM 2 Q. Can you please spell your first and last name?

10:56 AM 3 A. First name is D-e-l-a-n-t-y. Last name is

10:56 AM 4 L-a-n-g-e-n-f-e-l-d.

10:56 AM 5 Q. Thank you. Where are you currently employed?

10:56 AM 6 A. With the Wake County Sheriff's Office.

10:56 AM 7 Q. And what position do you hold with the Wake County
10:56 AM 8 Sheriff's Office?

10:56 AM 9 A. Deputy sheriff.

10:56 AM 10 Q. Prior to joining the Wake County Sheriff's Office as a
10:56 AM 11 deputy sheriff, were you employed with any other law
10:56 AM 12 enforcement agencies?

10:56 AM 13 A. Yes, ma'am, I was.

10:56 AM 14 Q. Can you please tell the jury where you've been employed?

10:56 AM 15 A. I been employed in Jasper County Sheriff's Office,
10:56 AM 16 walterboro P.D., Richland P.D., Colleton County Sheriff's
10:56 AM 17 office.

10:56 AM 18 Q. How many total years experience do you have in law
10:56 AM 19 enforcement?

10:56 AM 20 A. Approximately 12 and a half.

10:56 AM 21 Q. And which agency were you working for in 2014?

10:56 AM 22 A. I was with the Colleton County Sheriff's Office.

10:56 AM 23 Q. And do you recall a vehicle pursuit that you participated
10:56 AM 24 in on May 2nd, 2014?

10:56 AM 25 A. Yes, ma'am, I do.

LANGENFELD - DIRECT EXAMINATION

10:56 AM 1 Q. Can you please tell the jury how you became involved in
2 that pursuit?

10:56 AM 3 A. I was actually sitting stationary. I was in the area at
10:57 AM 4 the time looking for an individual with a warrant when I
10:57 AM 5 observed a black in color Lincoln exceeding the speed limit of
10:57 AM 6 45 miles per hour. He was doing approximately 56 miles per
10:57 AM 7 hour. Went behind the vehicle, initiated my blue lights and
10:57 AM 8 notified dispatch of what I had, and attempted to make a
10:57 AM 9 traffic stop. The subject did not stop. He accelerated speed,
10:57 AM 10 and therefore I advised them I was in pursuit of the vehicle.

10:57 AM 11 Q. And what is the code for pursuit?

10:57 AM 12 A. The code is 10-0.

10:57 AM 13 Q. And when you radioed that dispatch that you're 10-0, what
10:57 AM 14 happens to the dispatch communications?

10:57 AM 15 A. Dispatch typically sends out a tone which is an alert to
10:57 AM 16 let other deputies in the area know to clear the radio, that
10:57 AM 17 all transmission that's coming through is going to be for me
10:57 AM 18 because of the situation that I was in doing a pursuant.

10:57 AM 19 Q. And is that what happened in this case?

10:57 AM 20 A. Yes, ma'am, it was.

10:57 AM 21 Q. And while you were in pursuit of the vehicle, what, if
10:57 AM 22 anything, did you observe the occupants inside that vehicle
10:57 AM 23 doing?

10:57 AM 24 A. There was two occupants in the vehicle, and they had
10:58 AM 25 objects in their hands. At that time I notified dispatch and

LANGENFELD - DIRECT EXAMINATION

1 let them know what was going on.

2 Q. When you say they had objects in their hands, what do you
3 mean?

4 A. It appears to be a firearm.

5 Q. And you said you radioed to dispatch --

6 A. Yes, I radioed that to dispatch and let them know.

7 Q. And what -- as a result of seeing what you believe were
8 firearms in the occupants' hands, what did you do?

9 A. I backed off from the vehicle, and I advised dispatch and
10 surrounding units.

11 Q. Why did you back off the vehicle?

12 A. For officer safety reasons. I wasn't sure what was going
13 to happen at that point in time.

14 Q. Even though you backed off the vehicle, did you continue
15 to pursue it?

16 A. I did.

17 Q. And are your lights and sirens still activated at this
18 time?

19 A. Yes, ma'am, they were.

20 Q. Did that vehicle eventually come to a stop?

21 A. At -- it did, but not at that time when I radioed in, but
22 it came to a stop.

23 Q. Where did that vehicle finally come to a stop?

24 A. On the dirt portion of Brittlebank Road.

25 Q. And what, if anything, is significant about that

LANGENFELD - DIRECT EXAMINATION

1 particular area of Colleton County?

2 A. It's a very high crime area, gangs --

3 MR. SHAHID: Objection, Your Honor.

4 THE COURT: Basis?

5 MR. SHAHID: It's irrelevant.

6 THE COURT: Overruled.

7 BY MS. HENDERSON:

8 Q. I'm sorry? You were saying?

9 A. It's very high crime gang area. We've had a lot of
10 firearms out of that area, drug activity.

11 Q. And is there any particular gang that's associated with
12 Brittlebank Road?

13 A. Yes.

14 Q. Which gang would that be?

15 A. The Cowboys and the wildboys.

16 MR. SHAHID: Again, Your Honor, objection. This is
17 irrelevant.

18 THE COURT: What does it make more --

19 MS. HENDERSON: Your Honor, it becomes relevant with
20 Mr. Fishburne's associations.

21 THE COURT: Okay. If you tie it up, I'll overrule
22 your objection.

23 BY MS. HENDERSON:

24 Q. Once the vehicle stopped on Brittlebank Road, what
25 happened?

LANGENFELD - DIRECT EXAMINATION

10:59AM 1 A. The driver and the occupant jumped out of the vehicle and
10:59AM 2 ran away from my direction.

10:59AM 3 Q. And where did they run?

11:00AM 4 A. They ran into a wooded area.

11:00AM 5 Q. Did they stay together?

11:00AM 6 A. No, they weren't.

11:00AM 7 Q. And did you pursue a particular person?

11:00AM 8 A. Yes, ma'am, I did.

11:00AM 9 Q. Who did you pursue?

11:00AM 10 A. I pursued the driver.

11:00AM 11 Q. And how did you know he was the driver?

11:00AM 12 A. By what he was wearing.

11:00AM 13 Q. And were you eventually able to apprehend the driver?

11:00AM 14 A. Yes, ma'am, I was.

11:00AM 15 Q. Officer Langenfeld, did you have department-issued body
11:00AM 16 cameras back in 2014?

11:00AM 17 A. No, ma'am, we did not.

11:00AM 18 Q. Did you have a car that was operating a dash cam video?

11:00AM 19 A. Yes. Yes, ma'am, we were.

11:00AM 20 Q. I'm going to hand you what's been marked for purposes of
11:00AM 21 identification as Government's Exhibit 2. Officer Langenfeld,
11:00AM 22 do you recognize that?

11:00AM 23 A. Yes, ma'am, I do.

11:00AM 24 Q. And what is that?

11:00AM 25 A. That is my dash cam video.

LANGENFELD - DIRECT EXAMINATION

11:00AM 1 Q. And how do you know that's your dash cam video?

11:00AM 2 A. Because of my initials on it.

11:00AM 3 Q. Have you reviewed the contents of that video?

11:00AM 4 A. Yes, ma'am, I did.

11:00AM 5 Q. And does the video accurately and fairly depict the events
11:01AM 6 that occurred that day?

11:01AM 7 A. Yes, ma'am, it is.

11:01AM 8 MS. HENDERSON: Your Honor, the Government would move
11:01AM 9 Government's Exhibit 2 into evidence.

11:01AM 10 MR. SHAHID: Your Honor, object to it, because he's
11:01AM 11 already testified as to what he observed and what took place.
11:01AM 12 This is just cumulative information.

11:01AM 13 THE COURT: Okay. Overruled.

11:01AM 14 MS. HENDERSON: Thank you, Your Honor.

11:01AM 15 THE COURT: In evidence.

11:01AM 16 MS. HENDERSON: Thank you, Your Honor.

11:01AM 17 MR. SHAHID: That's Exhibit Number which one?

11:01AM 18 THE COURT: 2.

11:01AM 19 (Video played.)

11:01AM 20 BY MS. HENDERSON:

11:01AM 21 Q. Officer Langenfeld, if I could, please while we're waiting
11:01AM 22 on you to move, tell the jury what we're seeing -- if you can
11:01AM 23 just orient the jury to what they're looking at on the screen.

11:01AM 24 A. Yes, ma'am. Typically what I'm doing is I'm sitting in a
11:01AM 25 stationary position. My radar is still running for ongoing

LANGENFELD - DIRECT EXAMINATION

1 traffic, you know, anybody that's going past the speed limit.
2 Currently I'm just looking through some paperwork when my radar
3 went off, and that's when I was able to go behind the black in
4 color Lincoln to attempt to make a traffic stop.

5 Q. And is this middle screen that is the seat of a car, is
6 that the back seat of your car?

7 A. Yes, ma'am, it is.

8 Q. And the things that we're seeing in the bottom right-hand
9 corner that have your name and the speed limit and stuff like
10 that, is that your -- is that your current speed? Is that what
11 that shows?

12 A. Yes, ma'am. That's my current speed and --

13 MS. HENDERSON: Pause it, please.

14 (Video paused.)

15 THE WITNESS: It's my current speed and also the
16 icons in the boxes and stuff, like when it turns red, it
17 activates my emergency lights and brakes and everything.

18 (Video resumed.)

19 BY MS. HENDERSON:

20 Q. So now we see a red right next to emergency lights. Does
21 that mean you activated your blue lights?

22 A. Yes, ma'am, it does.

23 Q. Is that what triggers the sound to come on?

24 A. Yes, ma'am, it does.

25 MS. HENDERSON: You could pause it, please.

LANGENFELD - DIRECT EXAMINATION

1 11:03 AM 1 (Video paused.)

2 BY MS. HENDERSON:

3 Q. What did you just inform dispatch?

4 A. That I was in pursuit with a vehicle, my direction of

5 travel, where we're heading at, and it was occupied by two

6 individuals.

7 Q. Thank you.

8 11:04 AM 8 (Video resumed.)

9 MS. HENDERSON: Can you pause it, please?

10 11:04 AM 10 (Video paused.)

11 BY MS. HENDERSON:

12 Q. What did you just tell the dispatch at that point?

13 A. I told dispatch -- I notified them and said it appears

14 they have something in their hands.

15 Q. And is this the point where you back off this vehicle?

16 A. Yes, ma'am.

17 11:04 AM 17 MS. HENDERSON: Can you back it up just a few

18 seconds?

19 (Video resumed.)

20 BY MS. HENDERSON:

21 Q. So we've now entered the Brittlebank Road area; is that

22 correct?

23 A. That's correct.

24 11:05 AM 24 MS. HENDERSON: Can you pause it, please?

25 11:06 AM 25 (Video paused.)

LANGENFELD - DIRECT EXAMINATION

1 BY MS. HENDERSON:

2 Q. You keep using the term "bushbond". What's that mean?

3 A. That's a term that we use in law enforcement when somebody
4 is about to get out the vehicle and start running on foot.

5 (Video resumed.)

6 MS. HENDERSON: Can you pause it, please?

7 (Video paused.)

8 BY MS. HENDERSON:

9 Q. Officer Langenfeld, obviously unlike a body cam, the dash
10 camera does not follow you so we can't see what's happening in
11 the woods, but we hear you using some pretty strong language.
12 Can you please tell the jury what we can't see is going on in
13 those woods?

14 A. Yes, at that time when I was running behind the Defendant,
15 I couldn't see his hands, and he was still running, and he
16 wasn't complying until I gave him loud verbal commands to let
17 me see his hands, and due to the adrenaline of me not knowing
18 if he had weapons on him at that time and what I observed when
19 I was driving behind him, I had to take certain precautions.
20 Therefore he finally complied.

21 (Video resumed.)

22 BY MS. HENDERSON:

23 Q. Okay. At this point, Officer Langenfeld, do you have
24 sight still on the passenger?

25 A. No, ma'am, I lost the passenger at that time.

LANGENFELD - DIRECT EXAMINATION

11:09AM 1 Q. Officer Langenfeld, is this you that we see coming out of
11:09AM 2 the woods?

11:09AM 3 A. Yes, ma'am, it is.

11:09AM 4 Q. Officer Langenfeld, after you apprehended the driver, were
11:09AM 5 you able to identify who he was?

11:09AM 6 A. Yes, ma'am, I was.

11:09AM 7 Q. And how were you able to identify him?

11:09AM 8 A. Based off a search incident to arrest, I found several
11:09AM 9 items in his person, and he had a debit card on him with the
11:10AM 10 name Quentin Fishburne.

11:10AM 11 Q. And did that debit card have a picture on it?

11:10AM 12 A. No, ma'am, it didn't.

11:10AM 13 Q. How were you able to confirm that the person standing
11:10AM 14 there was, in fact, Quentin Fishburne?

11:10AM 15 A. We ran his information through dispatch, and they sent us
11:10AM 16 a picture on the phone. We believe we were able to identify
11:10AM 17 him.

11:10AM 18 Q. And is the person that you saw driving that vehicle that
11:10AM 19 you placed under arrest and identified and Quentin Fishburne on
11:10AM 20 the scene in the courtroom today?

11:10AM 21 A. Yes, ma'am, he is.

11:10AM 22 Q. And where is he?

11:10AM 23 A. He is sitting right over there (indicating).

11:10AM 24 Q. Next to Mr. Shahid right here?

11:10AM 25 A. Yes, ma'am.

LANGENFELD - DIRECT EXAMINATION

11:10 AM 1 MS. HENDERSON: Please let the record reflect that
11:10 AM 2 the witness has identified the Defendant, Mr. Fishburne.

11:10 AM 3 BY MS. HENDERSON:

11:10 AM 4 Q. Officer Langenfeld, while you were dealing with
11:10 AM 5 Mr. Fishburne, are you aware of any items that were located
11:10 AM 6 within the vehicle that were taken into evidence?

11:10 AM 7 A. Yes, ma'am, I was.

11:10 AM 8 Q. And what were they?

11:10 AM 9 A. There were two firearms.

11:10 AM 10 Q. Do you know what the two firearms were?

11:10 AM 11 A. One of the firearms was a Jimenez Arms, and the other was
11:10 AM 12 a Walter.

11:10 AM 13 Q. And do you know if either of those firearms returned
11:10 AM 14 stolen?

11:10 AM 15 A. Yes, ma'am, one were.

11:11 AM 16 Q. Which one did?

11:11 AM 17 A. The Walter was stolen.

11:11 AM 18 Q. And did you ever question -- or I apologize. Do you
11:11 AM 19 remember the serial number for the other firearm, the Jimenez
11:11 AM 20 Arms?

11:11 AM 21 A. I would have to refer to my report.

11:11 AM 22 Q. Do you have your report, a copy of your report with you?

11:11 AM 23 A. No, ma'am, I don't.

11:11 AM 24 MS. HENDERSON: Permission to approach, Your Honor?

11:11 AM 25 THE COURT: Sure.

LANGENFELD - DIRECT EXAMINATION

1 THE WITNESS: And you need a serial number for the
2 stolen one?

3 BY MS. HENDERSON:

4 Q. For the Jimenez Arms.

5 A. Oh, okay. It's going to be serial number 239429.

6 Q. And the Jimenez did not return stolen, correct?

7 A. Correct.

8 Q. Okay. And did you also have the tag number for that
9 vehicle that Mr. Fishburne was driving?

10 A. Yes, ma'am.

11 Q. And do you remember what at that tag number was?

12 A. I'm going to refer to this report again. It was FLU998,
13 South Carolina tag.

14 Q. Okay. Officer Langenfeld, do you remember who the car
15 came back registered to?

16 A. It came back to a Kenyetta -- I believe it was a Kenyetta
17 Fishburne.

18 Q. After the firearms were located in the vehicle, did you
19 ever question Mr. Fishburne about them?

20 A. Yes, ma'am, I did.

21 Q. And what statements, if any, did he make?

22 A. He stated -- as I can recall, "What firearms?" And I
23 believe he said it twice. And he said there was no firearms in
24 the vehicle.

25 Q. And after those firearms were located, did you take

LANGENFELD - CROSS-EXAMINATION

1 custody of them and place them into evidence?

2 A. Yes, ma'am, I did.

3 MS. HENDERSON: Beg the Court's indulgence, Your
4 Honor. Thank you. Please answer any questions Mr. Shahid has.

5 THE WITNESS: Yes, ma'am.

6 MR. SHAHID: would you pull that back up, please, and
7 just turn off that tape, the CD? Can you fast forward it to
8 where you had it stopped? Can you fast forward it a little bit
9 more? Pause it right there.

10 CROSS-EXAMINATION

11 BY MR. SHAHID:

12 Q. Detective -- deputy, I'm sorry. How are you doing today?

13 A. I'm all right, sir.

14 Q. So you have how many years of law enforcement experience?

15 A. Approximately 12 and a half.

16 Q. And how many law enforcement agencies have you been with
17 during that 12 and a half years?

18 A. I've been with four.

19 Q. Four?

20 A. Yes, sir.

21 Q. So about every three years or so you've been with a
22 different agency on average?

23 A. Give or take, yes, sir.

24 Q. And the county that you're working out of is out of
25 Georgia now?

LANGENFELD - CROSS-EXAMINATION

11:15 AM 1 A. No, sir, North Carolina.

11:15 AM 2 Q. North Carolina?

11:15 AM 3 A. Yes, sir.

11:15 AM 4 Q. Get my area right. Now, as you were having Mr. Fishburne
11:15 AM 5 in custody, there's a car right there that's blocking the car
11:15 AM 6 that he was operating; is that correct?

11:15 AM 7 A. You talking about the truck?

11:15 AM 8 Q. The truck.

11:16 AM 9 A. Yes, sir.

11:16 AM 10 Q. So you were busy with Mr. Fishburne, and you were not the
11:16 AM 11 one who actually collected the firearm; is that correct?

11:16 AM 12 A. No, sir, not at that time.

11:16 AM 13 Q. There was another deputy who was assisting you who
11:16 AM 14 collected the firearms?

11:16 AM 15 A. Yes, sir.

11:16 AM 16 Q. And the firearms were collected and found on the
11:16 AM 17 passenger's side of the car; is that correct?

11:16 AM 18 A. I believe it was found on the floorboard.

11:16 AM 19 Q. Of the passenger's side of the car?

11:16 AM 20 A. Yes, sir.

11:16 AM 21 Q. Okay. Not on the driver's side, but on the passenger's
11:16 AM 22 side of the car?

11:16 AM 23 A. According to the deputy that found it, yes.

11:16 AM 24 Q. All right. Now, the particular firearm we're talking
11:16 AM 25 about was not registered to Mr. Fishburne; isn't that correct?

LANGENFELD - CROSS-EXAMINATION

1 11:16 AM 1 A. which firearm are you talking about?

1 11:16 AM 2 Q. The Jimenez -- the gun we're talking about in question
1 11:16 AM 3 here.

1 11:16 AM 4 A. It was registered to someone else.

1 11:16 AM 5 Q. To somebody else, not to him?

1 11:16 AM 6 A. No, sir.

1 11:16 AM 7 Q. All right. And the vehicle that he was operating was in
1 11:16 AM 8 the name of somebody else as well; is that correct?

1 11:16 AM 9 A. Yes, sir.

1 11:16 AM 10 Q. All right. And do you have with you the results of a
1 11:17 AM 11 fingerprint examination of that gun?

1 11:17 AM 12 A. No, sir, I don't have that with me.

1 11:17 AM 13 Q. The guns were never fingerprinted?

1 11:17 AM 14 A. I don't -- I wasn't on crime scene, so I didn't
1 11:17 AM 15 fingerprint anything. We usually have a technician that does
1 11:17 AM 16 all of that.

1 11:17 AM 17 Q. All right. And do you know if they ever were
1 11:17 AM 18 fingerprinted?

1 11:17 AM 19 A. I can't tell you if they were or not.

1 11:17 AM 20 Q. All right. So we don't have any information of whether or
1 11:17 AM 21 not fingerprints were recovered from that gun?

1 11:17 AM 22 A. I don't have information.

1 11:17 AM 23 Q. Okay. And did you take the guns into custody yourself, or
1 11:17 AM 24 somebody else did?

1 11:17 AM 25 A. Yes, sir, I took it into custody and submitted it into

LANGENFELD - CROSS-EXAMINATION

1 evidence.

2 Q. All right. And so we can't see -- exactly from this
3 video, we can't see how the guns were recovered because that
4 truck is blocking our view from your camera; is that right?

5 A. Right.

6 Q. And we don't have any other information, any other videos
7 from anybody else taking a view or a recording visually of the
8 detective or the deputy or the police officer who actually
9 recovered the guns from the vehicle; do we?

10 A. I'm not sure. I'm just focused on my video here.

11 Q. But have you seen any other videos pursuant to you coming
12 to court today?

13 A. No, sir.

14 Q. Were you asked to review any other videos coming to court
15 today to testify?

16 A. No, sir.

17 Q. All right. But you clearly reviewed this CD?

18 A. Yes, sir.

19 Q. Okay. As you were preparing your report of what took
20 place in May of 2014, did you talk to other officers to see if
21 they had any other recordings?

22 A. No, sir.

23 Q. Did you talk to the -- I presume when you took the guns
24 into custody, you put them in some kind of evidence bag?

25 A. Yes, sir.

LANGENFELD - CROSS-EXAMINATION

11:18 AM 1 Q. Took them to the evidence locker?

11:18 AM 2 A. Yes, sir.

11:18 AM 3 Q. Did you ever talk to the evidence technician or your crime
11:18 AM 4 scene or anybody else and say, "Please take these guns and have
11:18 AM 5 them dusted for fingerprints?"

11:18 AM 6 A. No, sir. When -- they have their own process that they do
11:18 AM 7 where we just drop the evidence, and whatever goes on from
11:18 AM 8 there, that's a different department.

11:18 AM 9 Q. But you're considered the officer involved in the
11:19 AM 10 prosecution of this case; aren't you?

11:19 AM 11 A. Yes, sir.

11:19 AM 12 Q. Okay. So did you do anything else to follow up, to follow
11:19 AM 13 up on your investigation of this case?

11:19 AM 14 A. No, sir.

11:19 AM 15 Q. Okay. Did you talk to the woman whose name is titled --
11:19 AM 16 who owns this gun?

11:19 AM 17 A. No, sir.

11:19 AM 18 Q. Did she ever talk to you about anything regarding this
11:19 AM 19 being her gun?

11:19 AM 20 A. No, sir.

11:19 AM 21 Q. You understand at some point in time that gun was returned
11:19 AM 22 to her, right?

11:19 AM 23 A. I don't know if it was or not, sir.

11:19 AM 24 Q. We don't have that gun in evidence today; do we?

11:19 AM 25 A. I'm not sure, sir.

LANGENFELD - CROSS-EXAMINATION

11:19AM 1 Q. Okay. Did you ever talk to the owner of the car?

11:19AM 2 A. No, sir.

11:19AM 3 Q. And when we looked at the video, would you tell the jury
11:19AM 4 today as you were giving chase through this -- this pursuit of
11:19AM 5 this car, you thought they were still holding something in
11:19AM 6 their hands inside the car?

11:19AM 7 A. Yes, sir.

11:19AM 8 Q. Okay. And but you couldn't tell exactly what that was?

11:20AM 9 A. It -- I could -- I told what it appeared.

11:20AM 10 Q. What it appeared?

11:20AM 11 A. Yes, sir.

11:20AM 12 Q. Now, Deputy, what appeared and what is are two different
11:20AM 13 things; aren't they?

11:20AM 14 A. Correct.

11:20AM 15 Q. So you're not sure definitively what they had in their
11:20AM 16 hands; are you?

11:20AM 17 A. But he's talking about experience, I was able to tell
11:20AM 18 because of difference of, you know --

11:20AM 19 Q. So y'all driving at a high rate of speed, I think maybe up
11:20AM 20 to about 57, 60 miles an hour; is that right?

11:20AM 21 A. More than that, sir.

11:20AM 22 Q. More than that?

11:20AM 23 A. Yes, sir.

11:20AM 24 Q. Okay. So -- and they're moving ahead of you?

11:20AM 25 A. Yes, sir.

LANGENFELD - CROSS-EXAMINATION

11:20 AM 1 Q. And you focus on the car, and you radio in on the car
11:20 AM 2 giving your dispatch your location, correct?

11:20 AM 3 A. Correct.

11:20 AM 4 Q. Okay. But you weren't sure positively what you saw them
11:20 AM 5 holding in their hands, what they appear to have been?

11:20 AM 6 A. Well, sir, I know that it wasn't a Bible in their hands,
11:20 AM 7 so it appeared to be a firearm in their hands.

11:21 AM 8 Q. Now, you still got your report in front of you?

11:21 AM 9 A. No, sir.

11:21 AM 10 MS. HENDERSON: You need a clean copy?

11:21 AM 11 MR. SHAHID: Whatever you used. Thank you.

11:21 AM 12 BY MR. SHAHID:

11:21 AM 13 Q. You remember writing about that part?

11:21 AM 14 A. About --

11:21 AM 15 Q. About what you saw in the car? I'm going to ask you to
11:21 AM 16 review your notes one more time.

11:21 AM 17 A. Yes, sir.

11:21 AM 18 Q. And you go about middle, halfway down.

11:21 AM 19 A. Yes, sir, I write --

11:21 AM 20 Q. Isn't your report, Officer -- Deputy, "I observed that
11:21 AM 21 both occupants of the vehicle were waving something in the air
11:21 AM 22 believed to be a firearm"?

11:21 AM 23 A. Yes, sir.

11:21 AM 24 Q. "Something in the air"?

11:21 AM 25 A. Yes, sir.

LANGENFELD - REDIRECT EXAMINATION

1 **MR. SHAHID:** Give me just one second, Judge.

2 **THE COURT:** Sure.

3 (Pause.)

4 **BY MR. SHAHID:**

5 **Q.** I just want to go back to one other thing that -- a
6 question asked to you by Government's lawyer. Mr. Fishburne
7 did not say that was his gun; is that what I understand your
8 testimony to be?

9 **A.** Right.

10 **Q.** Okay. So he never said, "That's my gun." He said the
11 exact opposite; is that correct?

12 **A.** Yes, sir.

13 **MR. SHAHID:** Okay. Thank you. No further questions.

14 **REDIRECT EXAMINATION**

15 **BY MS. HENDERSON:**

16 **Q.** Officer Langenfeld, are you confident in your testimony
17 today that what you saw them have in their hands in that car
18 was a firearm?

19 **A.** Yes, ma'am.

20 **Q.** And was the passenger of that vehicle apprehended?

21 **A.** Yes, ma'am, he was.

22 **Q.** And was that passenger Renata Ellison?

23 **A.** No, ma'am.

24 **Q.** Was that passenger Kenyetta Fishburne?

25 **A.** No, ma'am.

LANGENFELD - REDIRECT EXAMINATION

1 Q. So the registered owner of the vehicle nor the purchaser
2 of the gun were in the car?

3 A. No, ma'am.

4 MS. HENDERSON: Thank you, Your Honor. I mean thank
5 you, Officer Langenfeld.

6 THE COURT: Anything else?

7 MR. SHAHID: That's it.

8 THE COURT: You're excused. Thank you very much.

9 THE WITNESS: Thank you, sir.

10 (Witness excused.)

11 THE COURT: Can the witness be excused and go back to
12 North Carolina?

13 MR. SHAHID: Not Georgia, North Carolina.

14 THE COURT: No problem?

15 MS. HENDERSON: No, Your Honor.

16 THE COURT: Okay. All right. Ladies and gentlemen
17 of the jury, this is a good time to take our morning break.
18 why don't you go to the jury room, relax, and we'll start again
19 in about 15 minutes.

20 (Jury out at 11:23 a.m.)

21 THE COURT: Okay. All right. we'll start again at a
22 quarter till.

23 (Recess from 11:24 a.m. to 11:45 a.m.)

24 THE COURT: Take your seats. Thank you. Anything
25 before we bring the jury in?

11:45 AM 1 MR. SHAHID: Judge, I just want to renew my previous
11:45 AM 2 objection about the prior witness's testimony about this being
11:45 AM 3 a gang-related area, the Cowboys. I mean, that's just so
11:45 AM 4 highly prejudicial as to where we're going with this case that
11:45 AM 5 I would like that testimony to be stricken from the record.

11:45 AM 6 THE COURT: Yes?

11:45 AM 7 MS. HENDERSON: Your Honor, the stipulation that we
11:45 AM 8 agreed upon to deal with the 2015 incident has Mr. Fishburne
11:45 AM 9 admitting he's an associate of the Cowboys. That's going to be
11:46 AM 10 a fact in evidence.

11:46 AM 11 THE COURT: What will be in evidence?

11:46 AM 12 MS. HENDERSON: That he's an associate of the
11:46 AM 13 Cowboys.

11:46 AM 14 THE COURT: How is that going to be in evidence?

11:46 AM 15 MS. HENDERSON: It's stipulated to, Your Honor.

11:46 AM 16 THE COURT: In another case?

11:46 AM 17 MS. HENDERSON: No, your Honor, in our stipulation
11:46 AM 18 that we have agreed upon in this case.

11:46 AM 19 THE COURT: Okay.

11:46 AM 20 MR. SHAHID: The stipulation we entered into was that
11:46 AM 21 incident took place in November of 2015. He was an associate.
11:46 AM 22 Then we got this information from this other deputy clear out
11:46 AM 23 of the blue that he's chasing these guys in an area where
11:46 AM 24 there's gang activity, including the Cowboys. That's just --
11:46 AM 25 has got no connection at all with him what happened in 2014.

1 That was something that happened in 2015.

2 THE COURT: Okay. Well, I'll take it under
3 advisement. I'll see it -- I'll strike it later on.

4 MR. SHAHID: Thank you.

5 THE COURT: Anything else?

6 MR. SCHOEN: Nothing from the Government, Your Honor.
7 (Jury in at 11:48 a.m.)

8 THE COURT: Okay. Take your seats. Thank you. You
9 want to call your next witness, please?

10 MS. HENDERSON: Thank you, Your Honor. The
11 Government would call Officer Richard Riney.

12 COURTROOM DEPUTY: Please come forward to be sworn.
13 Place your left hand on the Bible. Raise your right hand,
14 please.

15 (Witness sworn.)

16 COURTROOM DEPUTY: Thank you. You can have a seat in
17 the witness box.

18 RICHARD RINEY,
19 a witness called on behalf of the Government, being first duly
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. HENDERSON:

23 Q. Good afternoon, Officer Riney.

24 A. Good morning.

25 Q. Where are you currently employed?

RINEY - DIRECT EXAMINATION

1 A. Bluffton Police Department.

2 Q. How long have you worked for the Bluffton Police
3 Department?

4 A. A little over two years.

5 MR. SHAHID: Your Honor, I'm sorry. I'm having a
6 hard time hearing him.

7 THE COURT: Move that mic to you, okay? Thank you,
8 officer.

9 BY MS. HENDERSON:

10 Q. And prior to joining the Bluffton Police Department, did
11 you work for any other law enforcement agencies?

12 A. Yes, ma'am. I worked for the Colleton County Sheriff's
13 office for four years, South Carolina Highway Patrol for 12
14 years, and I was a police adviser for the Department of State
15 doing international training to police officers in other
16 countries.

17 Q. And so how many total years have you spent in law
18 enforcement?

19 A. 22.

20 Q. And in those 22 years, when were you working in Colleton
21 County?

22 A. Between the years of 2013 and 2017, I believe.

23 Q. So you were employed with Colleton County in 2014?

24 A. Yes, ma'am.

25 Q. What position did you hold with Colleton County at that

RINEY - DIRECT EXAMINATION

1 time?

2 A. Corporal sergeant.

3 Q. And do you recall if you were working on May 2nd, 2014
4 when Officer Langenfeld became involved in a pursuit with a
5 Lincoln in Colleton County?

6 A. Yes, ma'am.

7 Q. How did you become aware of that vehicle pursuit?

8 A. Through the radio communications from Officer Langenfeld.

9 Q. What, if anything, did you do when you heard that Officer
10 Langenfeld was in pursuit of a vehicle?

11 A. Started traveling in his direction to assist.

12 MR. SHAHID: I'm sorry. He's got a soft voice, and
13 he's not speaking into the microphone.

14 BY MS. HENDERSON:

15 Q. You could please just speak up? What, if anything, did
16 you do when you realized that Officer Langenfeld was in pursuit
17 of that vehicle?

18 A. Started traveling in the direction of the pursuit to
19 assist.

20 Q. And do you know at what speed you reached trying to get to
21 him?

22 A. I would say 80, 90 miles an hour.

23 Q. Why were you traveling at such high speeds?

24 A. Because it's a pursuit, and Officer Langenfeld was by
25 himself in the pursuit, and the occupants of the vehicle were

RINEY - DIRECT EXAMINATION

11:50 AM 1 potentially armed.

11:51 AM 2 Q. At what point did you actually join up with Officer
11:51 AM 3 Langenfeld in the pursuit?

11:51 AM 4 A. After the pursuit had concluded, on the dirt portion of
11:51 AM 5 Brittlebank Road, I met with Sergeant Rob Edwards who was
11:51 AM 6 already on scene and Officer Langenfeld who was escorting the
11:51 AM 7 suspect out of the woods in handcuffs.

11:51 AM 8 Q. What did you do upon arriving on scene?

11:51 AM 9 A. Approached the suspect vehicle, cleared it for safety to
11:51 AM 10 make sure there was no other occupants in the vehicle.

11:51 AM 11 Q. And when you were clearing that vehicle, what, if
11:51 AM 12 anything, did you observe inside it?

11:51 AM 13 A. Front passenger floorboard, two firearms that were
11:51 AM 14 partially protruding out from the passenger's seat.

11:51 AM 15 Q. Do you remember what those two firearms were?

11:51 AM 16 A. One was a Jimenez 9 millimeter. The other one was a
11:51 AM 17 walter .380.

11:51 AM 18 Q. And did either of those firearms contain ammunition?

11:51 AM 19 A. They did. They were fully loaded with -- each one had a
11:51 AM 20 round in the chamber.

11:52 AM 21 Q. What did you do after you observed the firearms laying on
11:52 AM 22 the passenger floorboard?

11:52 AM 23 A. Put on my gloves, retrieved the firearms, made them safe
11:52 AM 24 to pass on to whoever was going to collect them. That would be
11:52 AM 25 Sergeant David Long.

RINEY - CROSS-EXAMINATION

1 Q. When you say make them safe, what does that mean?

2 A. Unload them, lock the slide back.

3 Q. And then after you made them safe, you gave them to who?

4 I'm sorry.

5 A. Sergeant David Long.

6 Q. And were they placed into evidence after that point?

7 A. Yes, ma'am.

8 MS. HENDERSON: Beg the Court's indulgence, Your
9 Honor.

10 (Pause.)

11 MS. HENDERSON: Thank you, Officer Riney. Please
12 answer any questions Mr. Shahid has.

13 CROSS-EXAMINATION

14 BY MR. SHAHID:

15 Q. Good morning.

16 A. Good morning, sir.

17 Q. How are you doing today?

18 A. Doing great.

19 Q. You've got a soft voice. I'm going to come a little bit
20 closer to you, all right?

21 A. All right.

22 Q. Where are you currently employed?

23 A. Bluffton Police Department, Bluffton.

24 Q. Bluffton?

25 A. In Bluffton, South Carolina, yes.

RINEY - CROSS-EXAMINATION

1 11:53 AM 1 Q. So you've been with how many agencies in your career?

1 11:53 AM 2 A. Approximately four.

1 11:53 AM 3 Q. And how many years have you been in law enforcement?

1 11:53 AM 4 A. Just under 22.

1 11:53 AM 5 Q. So you were involved in retrieving these firearms; is that
1 11:53 AM 6 correct?

1 11:53 AM 7 A. Yes.

1 11:53 AM 8 Q. All right. And you say that the firearms that you
1 11:53 AM 9 retrieved were on the passenger's side of the car; is that
1 11:53 AM 10 correct?

1 11:53 AM 11 A. Yes, sir, floorboard.

1 11:53 AM 12 Q. So your involvement was simply coming up to the car that
1 11:53 AM 13 was stopped by the other deputy; is that right?

1 11:53 AM 14 A. Yes, sir.

1 11:53 AM 15 Q. All right. You don't have any other information
1 11:53 AM 16 concerning what transpired before that; is that correct?

1 11:53 AM 17 A. Other than the --

1 11:53 AM 18 Q. Only what you heard over the radio?

1 11:53 AM 19 A. Yes, sir.

1 11:53 AM 20 Q. All right. And now the two guns, I believe that you gave
1 11:53 AM 21 a report that the guns were partially under the seat; is that
1 11:53 AM 22 correct?

1 11:53 AM 23 A. Yes, sir.

1 11:53 AM 24 Q. All right. And I think you testified earlier a few
1 11:53 AM 25 seconds ago that you had on gloves; is that correct?

RINEY - CROSS-EXAMINATION

1 A. Yes, sir.

2 Q. When you retrieved the firearms?

3 A. Yes, sir.

4 Q. So what did you do after retrieving the firearms using
5 those gloves?

6 A. Passed them on to Sergeant Long who ran them through NCIC.

7 Q. Did you ask for those guns to be fingerprinted, dusted for
8 fingerprints?

9 A. Excuse me? What was the --

10 Q. Did you ask that those guns be dusted for fingerprints?

11 A. I did not.

12 Q. And the purpose of putting the gloves on was to make sure
13 that if you wanted to preserve evidence, that was a safe way of
14 doing that; is that correct?

15 A. Yes, sir, that's standard procedure.

16 MR. SHAHID: Be with you in one second, Judge.

17 THE COURT: Sure.

18 (Pause.)

19 BY MR. SHAHID:

20 Q. That concluded your involvement with this case after you
21 turned the firearms over to the other law enforcement officer;
22 is that right?

23 A. Other than completing a report, yes, sir.

24 MR. SHAHID: Okay. Thank you very much. Nothing
25 further.

JAMES DAVIS - DIRECT EXAMINATION

11:54 AM 1 MS. HENDERSON: Nothing further, Your Honor.

11:54 AM 2 THE COURT: Have a good trip back.

11:55 AM 3 THE WITNESS: Thank you, sir.

11:55 AM 4 (Witness excused.)

11:55 AM 5 MS. HENDERSON: Your Honor, the Government would
11:55 AM 6 call Lance Corporal James Davis.

11:55 AM 7 COURTROOM DEPUTY: Please come forward to be sworn.

11:55 AM 8 Place your left hand on the Bible and raise your right hand.

11:55 AM 9 (Witness sworn).

11:55 AM 10 COURTROOM DEPUTY: Have a seat in witness box.

11:55 AM 11 JAMES DAVIS,
11:55 AM 12 a witness called on behalf of the Government, being first duly
11:55 AM 13 sworn, was examined and testified as follows:

11:55 AM 14 DIRECT EXAMINATION

11:55 AM 15 BY MS. HENDERSON:

11:55 AM 16 Q. Good afternoon, Lance Corporal Davis. Where are you
11:55 AM 17 currently employed?

11:55 AM 18 A. The Walterboro Police Department.

11:55 AM 19 Q. And how long have you been employed with the Walterboro
11:55 AM 20 Police Department?

11:55 AM 21 A. For a little over three and a half years at this point.

11:55 AM 22 Q. And have you worked in any other law enforcement agencies?

11:55 AM 23 A. Yes, ma'am. I actually started with the Walterboro Police
11:56 AM 24 Department back in 2004. I worked there for about two -- three
11:56 AM 25 and a half years -- excuse me, two and a half years. Then I

JAMES DAVIS - DIRECT EXAMINATION

1 moved over to the Colleton County Sheriff's Office, and I was
2 there for right at 10 years prior to coming back over to the
3 city police department recently.

4 Q. So how many total years have you had with law enforcement?

5 A. About 16 and a half.

6 Q. And in those 16 years, were you working for Colleton
7 County in 2014?

8 A. Yes, ma'am, I was.

9 Q. And what was your rank at Colleton County in 2014?

10 A. I was a senior sergeant over criminal investigations.

11 Q. Did you hold any other titles at the Sheriff's Department?

12 A. Yes, ma'am, I was also the primary evidence custodian for
13 the department at that time.

14 Q. What are the responsibilities of the evidence custodian?

15 A. Well, any evidence that is brought in by any officer in
16 the department comes to the evidence -- to the evidence
17 custodian, evidence locker where it's then locked in and
18 secured and either taken for further processing to SLED or to
19 another agency and then stored until time for court. Once
20 everything is disposed of, it's also part of my job to return
21 property back to the rightful owner, things like that.

22 Q. And hitting on that last point you just made, if a
23 rightful owner comes into the Sheriff's Office and wants their
24 property back, do they have to show any sort of proof of
25 ownership before you can give them back their property?

JAMES DAVIS - DIRECT EXAMINATION

1 A. Yes, ma'am, usually we required some type of proof of
2 ownership.

3 Q. If somebody were to come in and claim a fireship -- a
4 fireship, sorry -- a firearm, what sort of ownership would they
5 have to show you?

6 A. Typically some type of receipt of purchase where they
7 purchased it from a gun dealer, firearms dealer, something of
8 that nature.

9 Q. And is that return documented somehow?

10 A. Yes, ma'am.

11 Q. And how is it documented?

12 A. We fill out a receipt form. Every agency's got a little
13 bit different form, but it pretty much a form showing the date
14 and time that the item was returned, a description of said
15 item, and signatures of the officer releasing it and the person
16 who's receiving the item.

17 MS. HENDERSON: Permission to approach the witness,
18 Your Honor?

19 THE COURT: Sure.

20 BY MS. HENDERSON:

21 Q. Lance Corporal Davis, I'm going to hand you what's already
22 been admitted into evidence as Government's Exhibit 3. Do you
23 recognize that?

24 A. Yes, ma'am, I do.

25 Q. And what is it?

JAMES DAVIS - DIRECT EXAMINATION

1 A. It's a photocopy of the receipt that I would have done.

2 It looks that it was a receipt where a firearm was returned to
3 a Miss Renata Ellison on December the 23rd of 2014.

4 Q. I'm sorry, Lance Corporal Davis. I was checking on some
5 technical issues so we could get it pulled up for the jury, and
6 I'm sorry. I'm going to have to ask you to repeat that.

7 A. Sure. It's just a photocopy of the written receipt where
8 the item -- this item was returned to a Miss Renata Ellison by
9 myself on December the 23rd of 2014.

10 Q. And what was returned to Ms. Ellison?

11 A. It's a black in color Jimenez Arms 9 millimeter handgun
12 with a magazine.

13 Q. And is that a serial number that we see written on there?

14 A. Yes, ma'am, it is.

15 Q. And what is that serial number?

16 A. 239429.

17 Q. And how did you know you were returning this to Renata
18 Ellison?

19 A. The -- at the very top next to the date where I actually
20 hand -- had handwritten in Ms. Ellison's name, and then at the
21 very bottom where it says received by is Ms. Ellison's
22 signature and date and then my name, my signature and date
23 directly below that.

24 MS. HENDERSON: Can we have the next page, please?
25 Permission to approach, Your Honor?

DAVIS - CROSS-EXAMINATION

1 THE COURT: Sure.

2 MS. HENDERSON: Miss Murray, can I switch to the
3 Elmo, please?

4 BY MS. HENDERSON:

5 Q. Lance Corporal Davis, did you make the photocopy of that
6 license?

7 A. Yes, ma'am.

8 Q. And what is -- whose license is that?

9 A. That is Renata Ellison.

10 Q. And that is who you returned the firearm to that day; is
11 that correct?

12 A. Yes, ma'am, that's why I would have -- I photocopied the
13 license and attached it with the receipt.

14 MS. HENDERSON: Thank you, Lance Corporal Davis.
15 Please answer any questions Mr. Shahid has.

16 THE WITNESS: Yes, ma'am.

17 CROSS-EXAMINATION

18 BY MR. SHAHID:

19 Q. Good morning.

20 A. Good morning, sir.

21 Q. How are you doing today?

22 A. I'm doing pretty good.

23 Q. Good. Back in 2000 -- my name is Peter Shahid, and I
24 represent Mr. Fishburne, and I'm going to ask you some
25 questions about your testimony that you just gave to this jury.

DAVIS - CROSS-EXAMINATION

1 A. Yes, sir.

2 Q. So back in 2014, you were a supervising sergeant?

3 A. I was a senior sergeant in the criminal investigation
4 division for the Sheriff's Office, yes, sir.

5 Q. Okay. So that means that you had other officers who you
6 supervised and watch over and make sure they did the right
7 thing; is that correct?

8 A. To an extent. All the investigators at that time were
9 sergeants. However, I was the senior as far as the seniority
10 time and service.

11 Q. So in the course of an investigation, you want to make
12 sure that things are followed through; is that correct?

13 A. Yes, sir, as much as possible.

14 Q. Okay. And this firearm that we're talking about ended up
15 in your official capacity as the custodian of evidence; is that
16 right?

17 A. Yes, sir.

18 Q. So from May of 2014 to December of 2014, this firearm was
19 in the official custody, control of the Walterboro -- of the
20 Colleton County Sheriff's Office?

21 A. I don't know the dates, but that could -- that very well
22 could be if it was -- I don't know when it was actually logged
23 in to evidence, turned in to evidence, but if it was logged in,
24 unless there was some other documentation showing where it had
25 been taken for any other testing or -- you know, forensic

DAVIS - CROSS-EXAMINATION

1 12:02 PM 1 testing or anything like that, shy of that, then yes, it would
2 12:02 PM 2 have been in my -- in the department -- in the locker's custody
3 12:02 PM 3 up until it was returned.

4 12:02 PM 4 Q. So did you have any prior knowledge or information about
5 12:02 PM 5 this firearm being recovered?

6 12:02 PM 6 A. I do not recall, to be honest with you, that particular --
7 12:02 PM 7 that particular case. I do not recall.

8 12:02 PM 8 Q. All right. So at some point in time, this woman comes up
9 12:02 PM 9 to you or makes contact with you and says, "I want my firearm
10 12:02 PM 10 back;" is that fair?

11 12:02 PM 11 A. Yes, sir, that's fair.

12 12:02 PM 12 Q. And at that -- when that happened, did you engage with the
13 12:02 PM 13 principal officer who recovered the firearm and have a
14 12:02 PM 14 discussion with that particular officer?

15 12:03 PM 15 A. I would have done some due diligence to ensure that the
16 12:03 PM 16 case was disposed of, that there were no holds on the firearm,
17 12:03 PM 17 that it wasn't attached to any other evidentiary case that was
18 12:03 PM 18 still pending prior to being released, but as far as specifics
19 12:03 PM 19 of talking to the original case officer, I don't recall
20 12:03 PM 20 personally.

21 12:03 PM 21 Q. So -- this is evidence? This gun is evidence?

22 12:03 PM 22 A. Yes, sir.

23 12:03 PM 23 Q. Of a crime?

24 12:03 PM 24 A. Yes, sir.

25 12:03 PM 25 Q. Or a potential crime or somebody got arrested for this

DAVIS - CROSS-EXAMINATION

1 12:03 PM 1 gun, and so you got it for a reason?

2 12:03 PM 2 A. Okay. Yes, sir.

3 12:03 PM 3 Q. Okay. And were you made aware that the charges against
4 Mr. Fishburne associated with this gun was dismissed?

5 12:03 PM 5 A. I don't -- again, I don't recall the specifics, but I
6 would have made a -- I would have made some effort to confirm
7 that there were no pending charges attached to -- to that
8 firearm before it was released.

9 12:03 PM 9 Q. So there was no more need for the gun?

10 12:03 PM 10 A. At that -- to my knowledge, at that time, those are --
11 like I said, I would have confirmed that the charges -- any
12 charges attached were disposed of at that point, so that --
13 before releasing the firearm.

14 12:04 PM 14 Q. All right. And so the gun was returned to this person
15 whose driver's license is shown on the screen right now?

16 12:04 PM 16 A. Yes, sir, that's correct.

17 12:04 PM 17 Q. And what's that person's name?

18 12:04 PM 18 A. Renata Ellison.

19 12:04 PM 19 Q. I want to hand you a copy of the Second Superseding
20 Indictment and ask you to read the second name of the Defendant
21 on that Indictment.

22 12:04 PM 22 A. The Renata Shontel Ellison?

23 12:04 PM 23 Q. Yeah. Is that the same name that -- on that driver's
24 license?

25 12:04 PM 25 A. Yes, sir, it is.

DAVIS - CROSS-EXAMINATION

1 12:04 PM Q. Now, what processes were done with this firearm as far as
2 having it tested for fingerprints?

3 12:04 PM A. I do not know. I do not recall the -- any details on that
4 aspect of it from the original incident.

5 12:05 PM Q. So the charges regarding the use of this firearm were no
6 longer needed, and thus the gun was returned to the rightful
7 owner?

8 12:05 PM A. To my knowledge, yes, sir.

9 12:05 PM Q. And -- well, and that's what you signed on Exhibit
10 Number 3?

11 12:05 PM A. Correct.

12 12:05 PM Q. Returning this firearm. She signed for it, and you gave
13 it away, back to her?

14 12:05 PM A. Yes, sir, that's correct.

15 12:05 PM MR. SHAHID: Let me get this marked for
16 identification only, please.

17 12:06 PM THE COURT: You want to show that to them?

18 12:06 PM MR. SHAHID: Yes, just for identification at this
19 point, Judge.

20 12:06 PM MS. HENDERSON: Your Honor, may we approach?

21 12:06 PM THE COURT: Just give me -- he just marked it for
22 identification.

23 12:06 PM MS. HENDERSON: Before we go any further, we need to
24 approach, Your Honor.

25 12:06 PM THE COURT: He can't do anything unless he moves it

DAVIS - CROSS-EXAMINATION

1 into evidence. If he moves it into evidence, then I'll make a
2 ruling.

3 MR. SHAHID: I'm going to go through the process.

4 THE COURT: Just identify it.

5 MR. SHAHID: Yeah.

6 THE COURT: Okay.

7 BY MR. SHAHID:

8 Q. Sir, you said earlier that you had gone through the
9 process to make sure that the gun was no longer needed; is that
10 correct?

11 A. Yes, sir.

12 Q. Including whether or not the charges were disposed of; is
13 that right?

14 A. Yes, sir.

15 Q. I've marked only -- this document only -- for
16 identification only. Have you seen something like this before?

17 A. Yes, sir.

18 Q. Okay. And you see the name of the Defendant on there?

19 A. Yes, sir, I do.

20 Q. Okay. And do you know whether or not that particular
21 firearm that we were talking about returned to Ms. Ellison was
22 associated with the name on that document?

23 A. I do not know, to be completely honest with you. I'm not
24 sure.

25 Q. Would you have seen something like that prior to turning

DAVIS - CROSS-EXAMINATION

1 the firearm over to Ms. Ellison?

2 A. Possibly. The other -- another way that we typically --
3 that I typically -- we follow up on it would be just contacting
4 the clerk's office directly and finding out -- getting
5 confirmation that cases are -- or that the case has been
6 disposed of, things like that, so I may or may not have seen
7 this actual document at that time.

8 Q. So just so the jury's clear on this, just because someone
9 walks in and says, "I want my property back," you're not doing
10 that until certain boxes are checked off?

11 A. Yes, sir, that's correct.

12 Q. Number 1, the item is no longer needed?

13 A. Yes, sir.

14 Q. And two, that's the rightful owner of the gun?

15 A. Yes, sir.

16 Q. Or the property we're talking about?

17 A. Yes, sir.

18 Q. And in this particular instance when we're dealing with
19 this firearm, those two things were done?

20 A. Yes, sir.

21 Q. And what I've handed to you is an order. You would have
22 received or reviewed something like what I've marked as
23 exhibit -- as that document before turning that gun over?

24 A. Either that or -- again, either that, or I would have
25 contacted the clerk's office directly to confirm the --

DAVIS - CROSS-EXAMINATION

1 12:09 PM Q. Does that appear to you to be a court order?

2 12:09 PM A. Yes, sir, it definitely appears to be court documentation.

3 12:09 PM Q. And does it show a date when the order was executed?

4 12:09 PM THE COURT: Wait a minute. You haven't --

5 12:09 PM MR. SHAHID: I'm just asking if it has a date. I'm
6 not asking him the date.

7 12:09 PM THE COURT: Okay. That's it.

8 12:09 PM THE WITNESS: Yes, it does.

9 12:09 PM BY MR. SHAHID:

10 12:09 PM Q. Okay. We don't want to publish that to the jury yet, but
11 it shows a date and a defendant's name on that; is that
12 correct?

13 12:09 PM A. Yes, sir, it does.

14 12:09 PM MR. SHAHID: Judge, at this point I would move it
15 into evidence.

16 12:09 PM MS. HENDERSON: Your Honor, we need a sidebar,
17 please.

18 12:09 PM THE COURT: Let's -- I don't like sidebars because it
19 takes up time. If you got an objection, how about state the
20 objection.

21 12:09 PM MS. HENDERSON: Your Honor, he's opening the door to
22 other territory.

23 12:09 PM THE COURT: I'm sorry?

24 12:09 PM MS. HENDERSON: He has opened the door to go into
25 other territory.

DAVIS - REDIRECT EXAMINATION

1 THE COURT: Don't you want him to do that?

2 MS. HENDERSON: Sure, Your Honor.

3 THE COURT: Okay. All right. I guess that means
4 withdraw the objection. That's fine.

5 MR. SHAHID: Give me just -- before I proceed, check
6 one --

7 THE COURT: Before you proceed, why don't you find
8 out -- be careful what you ask for, because you might get it.

9 (Pause.)

10 MR. SHAHID: Nothing further, Judge.

11 THE COURT: Okay. So it's marked for identification
12 only. Thank you.

13 MR. SHAHID: That's the exhibit. Thank you, sir.
14 Appreciate your testimony.

15 REDIRECT EXAMINATION

16 BY MS. HENDERSON:

17 Q. Lance Corporal Davis, is there more than one way to
18 dispose of a case?

19 A. Yes, ma'am.

20 Q. Could you also have returned a gun if convictions had
21 taken place?

22 A. Yes, ma'am.

23 MS. HENDERSON: No further questions, Your Honor

24 THE COURT: Anything else?

25

COOK - DIRECT EXAMINATION**RECROSS-EXAMINATION****BY MR. SHAHID:**

Q. Did Ms. Ellison say anything else to you prior to returning the firearm back to her?

A. I don't recall. Nothing particular that I recall.

Q. Did she give you anything else besides the proof of purchase of that gun, the ownership of that gun?

A. Not that I recall. Driver's license that I photocopied.

MR. SHAHID: Thank you, sir.

THE COURT: Okay. Thank you. Thank you very much. You're excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. SCHOEN: Your Honor, the Government calls Robert Cook.

COURTROOM DEPUTY: Please come forward to be sworn. Place your left hand on the Bible. Raise your right hand, please.

(Witness sworn.)

COURTROOM DEPUTY: Thank you. You may have a seat.

ROBERT COOK,
a witness called on behalf of the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION**BY MR. SCHOEN:**

COOK - DIRECT EXAMINATION

1 12:13 PM Q. Good morning.

2 12:13 PM A. Good morning.

3 12:13 PM Q. Could you please introduce yourself to the jury? Speak
4 into that microphone so they can hear you.

5 12:13 PM A. I'm Robert W. Cook, Senior.

6 12:13 PM Q. And where are you employed?

7 12:13 PM A. City of Walterboro Police Department.

8 12:13 PM Q. Say again?

9 12:13 PM A. City of Walterboro Police Department.

10 12:13 PM Q. What's your current rank with the City of Walterboro
11 Police Department?

12 12:13 PM A. I'm a sergeant.

13 12:13 PM Q. How long have you been employed with the City of
14 Walterboro Police Department?

15 12:13 PM A. Approximately 13 years.

16 12:13 PM Q. Prior to joining the Walterboro Police Department, where
17 were you employed?

18 12:13 PM A. I was in St. George for five months, the Colleton County
19 Sheriff's Office for two and a half years, and prior to that I
20 was 20 years in the Army from which I retired.

21 12:13 PM Q. Thank you for your service. I want to direct your
22 attention to March 31st of 2018. Do you recall that day?

23 12:13 PM A. Yes, sir.

24 12:13 PM Q. And what were you doing on March 31st of 2018?

25 12:13 PM A. At the time of this incident, we were doing a traffic

COOK - DIRECT EXAMINATION

1 12:14 PM 1 safety checkpoint.

2 12:14 PM 2 Q. who was the ranking officer at that traffic safety
3 12:14 PM 3 checkpoint?

4 12:14 PM 4 A. I was.

5 12:14 PM 5 Q. And where was the -- where was the checkpoint located?

6 12:14 PM 6 A. In the area of Center Street and Hiers Corner which is
7 12:14 PM 7 located in the city of Walterboro.

8 12:14 PM 8 Q. why did you set up a traffic checkpoint at that particular
9 12:14 PM 9 location?

10 12:14 PM 10 A. Because of complaints from the people who live in the
11 12:14 PM 11 neighborhood. It's in front of a school zone, and they were
12 12:14 PM 12 complaining about large amount of traffic and speeders and
13 12:14 PM 13 careless drivers in the neighborhood.

14 12:14 PM 14 Q. And what was it that you were checking for when people
15 12:14 PM 15 came to the checkpoint?

16 12:14 PM 16 A. License, registration, and insurance cards.

17 12:14 PM 17 Q. So walk me through this. You walk up to the vehicle --

18 12:14 PM 18 A. Yes, sir. The car pulls up to whichever officer was
19 12:14 PM 19 standing there. That officer would ask the person for a
20 12:14 PM 20 license, registration, and insurance. We checked everyone that
21 12:14 PM 21 came through. If there was no issues, that person was released
22 12:14 PM 22 to go on their own.

23 12:14 PM 23 Q. You said every driver?

24 12:15 PM 24 A. Yes, sir.

25 12:15 PM 25 Q. So you're not picking and choosing one versus another?

COOK - DIRECT EXAMINATION

1 12:15 PM A. No, sir.

2 12:15 PM Q. Do you know Quentin John Fishburne?

3 12:15 PM A. At that time only by name.

4 12:15 PM Q. Did you ever see him before, had any interactions with
5 him?

6 12:15 PM A. Not that I recall, no, sir.

7 12:15 PM Q. I want to talk about the cameras that you wear when you're
8 on duty.

9 12:15 PM A. Yes, sir.

10 12:15 PM Q. Where do you have cameras when you're working?

11 12:15 PM A. We have cameras mounted in our vehicles as well as body
12 cameras mounted on our person.

13 12:15 PM Q. When you're operating one of these traffic checkpoints,
14 when do you turn your body camera on?

15 12:15 PM A. When it looks like we're going to have a -- possibly write
16 a citation or do a vehicle search or have an issue with a
17 person that's coming through the checkpoint.

18 12:15 PM Q. Do you -- do you run them continuously with -- for every
19 person who comes through the checkpoint?

20 12:15 PM A. No, sir. If we did that, we're on a 12-hour shift. If we
21 ran the camera continuously for 12 hours, it wouldn't make it
22 through the 12 hours.

23 12:16 PM Q. When you say, "it wouldn't make it through," what do you
24 mean?

25 12:16 PM A. The cameras have a time on them that we run them. We

COOK - DIRECT EXAMINATION

1 could -- if we run the camera for 12 continuous hours, chances
2 are at about the halfway point, the cameras would lose the
3 amount of time that they could retain to be able to be charged.
4 If we're on a checkpoint for two hours and we run the camera
5 continuously for two hours, and we still got at least four more
6 hours on shift, there would be an issue with the camera
7 somewhere down the road.

8 Q. All right. I want to --

9 MR. SCHOEN: Permission to approach the witness?

10 THE COURT: Sure.

11 MR. SCHOEN: Let the record reflect that I'm
12 approaching the witness with what's been previously marked as
13 Government's Exhibit 5.

14 MR. SHAHID: 5?

15 MR. SCHOEN: 5.

16 BY MR. SCHOEN:

17 Q. Sergeant, do you recognize what I just handed you?

18 A. Yes, sir.

19 Q. And what is that?

20 A. It's a video of our checkpoint that day.

21 Q. And how do you know that that's what that is?

22 A. I previously reviewed it, and it's been marked with his
23 information, and I've also initialed it. I've seen the video.

24 MR. SCHOEN: Okay. Can we bring up Exhibit 5?

25 THE COURT: Is it in evidence?

COOK - DIRECT EXAMINATION

1 MR. SCHOEN: Oh. Your Honor, I move Exhibit 5 into
2 evidence.

3 THE COURT: Any objection?

4 MR. SHAHID: No objection.

5 THE COURT: Okay. In evidence.

6 MR. SCHOEN: Can you please bring up Exhibit 5?

7 (Video played.)

8 MR. SCHOEN: All right. Stop it right here.

9 (Video paused.)

10 BY MR. SCHOEN:

11 Q. Just want to get a little bit of information about where
12 we are and what we're looking at. About what time of day is
13 this?

14 A. It's somewhere around 15:25 or 3:25 in the afternoon.

15 Q. And what street are we on right here?

16 A. Right here we are on Center Street on the shoulder of the
17 road.

18 Q. Is this the location where you were conducting the
19 checkpoint?

20 A. It's actually the intersection of Center Street and Hiers
21 Corner. We had him pull to this area for more room to conduct
22 the search.

23 Q. And who is this person who is -- well, I should say who's
24 the person with their hands in the air?

25 A. That is Mr. Fishburne.

COOK - DIRECT EXAMINATION

1 12:18 PM Q. Do you recognize Mr. Fishburne in the courtroom today?

2 12:18 PM A. Yes, sir.

3 12:18 PM Q. Can you point him out?

4 12:18 PM A. Over your left shoulder.

5 12:18 PM Q. What's he wearing?

6 12:18 PM A. Appears to be glasses. Has a beard and a blue shirt near
7 as I can tell.

8 12:18 PM MR. SHAHID: We'll stipulate, Judge, as to the
9 Defendant.

10 12:18 PM MR. SCHOEN: Let the record reflect that he's
11 correctly identified the Defendant, Mr. Fishburne.

12 12:18 PM BY MR. SCHOEN:

13 12:18 PM Q. Who is this person who is frisking Mr. Fishburne?

14 12:18 PM A. That is Patrolman Duboise.

15 12:18 PM MR. SCHOEN: All right. Let's play a little bit
16 more.

17 12:20 PM (Video resumed.)

18 12:20 PM MR. SCHOEN: Stop right there.

19 12:20 PM (Video paused.)

20 12:20 PM BY MR. SCHOEN:

21 12:20 PM Q. What did you just ask?

22 12:20 PM A. I asked him if he had found a handgun, which he had said,
23 "Gun," and I asked him if he had found it. It's underneath the
24 driver's seat of the vehicle.

25 12:20 PM MR. SCHOEN: Okay. Let's keep playing it.

COOK - DIRECT EXAMINATION

1 (Video resumed.)

2 MR. SCHOEN: Let's stop it here.

3 (Video paused.)

4 BY MR. SCHOEN:

5 Q. What are you doing here?

6 A. I'm detaining Mr. Fishburne.

7 Q. Why are you detaining him?

8 A. We found an unlawful carried weapon inside the vehicle, so
9 he was detained.

10 Q. Okay. So when you say an unlawful -- unlawfully carried
11 weapon, where under South Carolina law can you carry a weapon
12 in your car?

13 A. There's three places that you're allowed by South
14 Carolina. It's in a center console, in a glove box, or in the
15 trunk of your vehicle.

16 Q. So under the seat is not a place where you could lawfully
17 carry a gun?

18 A. No, sir, unless you have a concealed carry permit, and he
19 does not.

20 MR. SCHOEN: I want to back up real quickly, if we
21 can, to about 17 seconds.

22 (Video resumed.)

23 MR. SCHOEN: Stop it right there for me. Back up
24 just a tad. I want to ask him about the license plate. Stop
25 it.

COOK - DIRECT EXAMINATION

1 (Video paused.)

2 BY MR. SCHOEN:

3 Q. Can you read me the -- can you read the license plate off
4 of that vehicle?

5 A. It appears to be PFM377.

6 Q. PFM377?

7 A. Yes, sir.

8 MR. SCHOEN: All right. I want to jump up to about 3
9 minutes and 45 seconds.

10 (Video resumed.)

11 BY MR. SCHOEN:

12 Q. Let me just ask it this way. When you find a gun, what,
13 if any, checks do you do on that gun?

14 A. We run a serial number check in case it's stolen, and we
15 ask if the person who we take it from is prohibited from
16 possessing a firearm in the state of South Carolina.

17 Q. Did you run that check with regard to this gun?

18 A. Yes, sir, every gun we get, we run the serial number on.

19 Q. And what did you learn with regard to whether or not the
20 gun had been reported stolen?

21 A. At that time, it was not stolen, but we did learn that
22 Mr. Fishburne was prohibited from possessing a firearm
23 federally and statewide.

24 Q. And what did you do with this vehicle?

25 A. We turned it over to his mother when she arrived.

COOK - DIRECT EXAMINATION

1 1 2 : 2 4 P M Q. Mr. Fishburne's mother?

2 1 2 : 2 4 P M A. Yes, sir.

3 1 2 : 2 4 P M Q. Why did you turn it over to Mr. Fishburne's mother?

4 1 2 : 2 4 P M A. We had already searched the car. We really had no reason
5 to hold the car, and I believe it was registered to her in the
6 first place, so we turned it over to her.

7 1 2 : 2 4 P M MR. SCHOEN: All right. Permission to approach the
8 witness --

9 1 2 : 2 5 P M THE COURT: Sure.

10 1 2 : 2 5 P M MR. SCHOEN: -- with what's been previously marked as
11 Government's Exhibit 4.

12 1 2 : 2 5 P M BY MR. SCHOEN:

13 1 2 : 2 5 P M Q. Can you identify what I just handed you?

14 1 2 : 2 5 P M A. Yes, sir, it's a video from the same traffic stop, my
15 in-car video.

16 1 2 : 2 5 P M Q. When you say your "in-car video," where is that coming
17 from?

18 1 2 : 2 5 P M A. It's a camera head that's mounted on the windshield of the
19 car, and the control box is in the interior of the car, and it
20 records our stops.

21 1 2 : 2 5 P M Q. Okay. Have you previously had a chance to look at that
22 disk?

23 1 2 : 2 5 P M A. Yes, sir.

24 1 2 : 2 5 P M Q. And how do you know that your in-car footage from that day
25 is on that disk?

COOK - CROSS-EXAMINATION

1 A. I have initialed it, and it says, "Cook in-car video."

2 MR. SCHOEN: Okay. Your Honor, at this time we would
3 move Government's Exhibit 4 into evidence.

4 THE COURT: Any objection?

5 MR. SHAHID: No objection.

6 THE COURT: In evidence.

7 MR. SCHOEN: Can we just bring this up? I'm going to
8 ask him just a short question about it.

9 (Video played.)

10 MR. SCHOEN: All right. You can stop it.

11 BY MR. SCHOEN:

12 Q. Do you recognize this as footage from that same day?

13 A. Yes, sir.

14 MR. SCHOEN: All right. I'm going to ask another
15 officer about what's shown on this video, so I don't have any
16 further questions for you at this time.

17 THE WITNESS: Yes, sir.

18 MR. SCHOEN: will you please answer any questions
19 from Mr. Shahid?

20 THE WITNESS: Yes, sir.

21 MR. SHAHID: Excuse me, Judge. One second, please.

22 THE COURT: Sure.

23 CROSS-EXAMINATION

24 BY MR. SHAHID:

25 Q. Good afternoon. How are you doing today?

COOK - CROSS-EXAMINATION

1 A. Okay. Yourself?

2 Q. Good. Couple of questions I have for you. I'm Peter
3 Shahid, and I represent Mr. Fishburne.

4 A. Yes, sir.

5 Q. Your Honor the supervising sergeant on the scene for this
6 checkpoint; is that correct?

7 A. Yes, sir.

8 Q. And the checkpoint started at what hour?

9 A. I believe it was 13:50, which is --

10 Q. I'm sorry, I'm going to ask you if you mind using that
11 microphone.

12 A. It was 13:50, 10 minutes to 2:00.

13 Q. And in layman's term, how long did that checkpoint last?

14 A. Approximately an hour and a half.

15 Q. And the sole reason for having that checkpoint, if I
16 understand your testimony, is about complaints about people
17 speeding; is that correct?

18 A. Yes, sir.

19 Q. And when you had the encounter with Mr. Fishburne, the
20 checkpoint was concluded; is that correct?

21 A. It was being broken down as we were speaking with
22 Mr. Fishburne.

23 Q. And I believe that you testified earlier that there were
24 other cars that were stopped; is that correct?

25 A. Yes, sir.

COOK - CROSS-EXAMINATION

1 Q. And were other cars stopped that involved some criminal
2 activity such as simple possession of marijuana or drug
3 paraphernalia?

4 A. Yes, sir.

5 Q. And those cars that you stopped or pulled over, those cars
6 were not searched; were they?

7 A. I believe the one that I did get simple possession out of
8 was searched.

9 Q. And in doing that, that did not cause the checkpoint to be
10 shut down?

11 A. No, sir.

12 Q. So your involvement with this, Sergeant, was coming out to
13 the car after Mr. Fishburne had an encounter with another
14 officer; is that correct?

15 A. Yes, sir.

16 Q. And you had your body-worn camera on. That's what we were
17 watching in that video was your body-worn camera?

18 A. That's correct, yes, sir.

19 Q. So you're required by Walterboro police policy to have
20 your camera activated and working when you have an encounter
21 with a citizen; is that correct?

22 A. Yes, sir.

23 Q. Including when you have such things as traffic stops?

24 A. That's correct.

25 Q. Or that you may be engaged into the investigation of a --

COOK - CROSS-EXAMINATION

1 of suspicious activity?

2 A. Yes, sir.

3 Q. And I think you testified earlier, Sergeant, that when
4 Mrs. -- Mr. Fishburne's mom came up, you turned the car over to
5 her?

6 A. That's correct.

7 Q. You had done what you needed to do with the car?

8 A. Yes, sir.

9 Q. Didn't need to keep the car any longer?

10 A. Yes, sir.

11 Q. So you gave the car back over to the rightful owner?

12 A. To who?

13 Q. To the rightful owner.

14 A. Yes, sir.

15 Q. At that point, you were not the one to locate the firearm;
16 is that correct?

17 A. That's correct.

18 Q. That was Officer Duboise?

19 A. Yes, sir.

20 Q. And did you do a report about this incident, Sergeant?

21 A. I did not.

22 Q. Prior to having this checkpoint go into effect, did y'all
23 write any kind of report or sort of a plan on how you were
24 going to do this checkpoint?

25 A. No, sir, we asked for permission from the captain, and he

COOK - CROSS-EXAMINATION

1 gave it.

2 Q. And that was something verbally?

3 A. That's correct.

4 Q. That was not written either?

5 A. No, sir.

6 Q. Now, there are other ways of slowing cars down, isn't it,
7 Sergeant, by having a car with a radar out there patrolling the
8 area?

9 A. That's correct.

10 MR. SHAHID: Excuse me just one second, Judge.

11 THE COURT: Sure.

12 (Pause.)

13 MR. SHAHID: Everybody, bear with me one second. I
14 just need to check something real quick.

15 THE COURT: Sure.

16 (Pause.)

17 MR. SHAHID: Nothing further, Judge. Thank you.

18 MR. SCHOEN: No redirect, Your Honor.

19 THE COURT: Okay. Thank you, Sergeant. You can go
20 back to work.

21 THE WITNESS: Thank you, sir.

22 (Witness excused.)

23 MR. SCHOEN: Permission to approach and --

24 THE COURT: Sure.

25 MR. SCHOEN: -- tender this into evidence. Your

1 Honor, the Government calls Officer Brandon Duboise to the
2 stand.

3 THE COURT: Okay.

4 COURTROOM DEPUTY: Please come forward to be sworn.
5 Place your left hand on the Bible and raise your right hand.
6 (Witness sworn.)

7 BRANDON DUBOISE,
8 a witness called on behalf of the Government, being first duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SCHOEN:

12 Q. Good morning, Officer.

13 A. Good morning.

14 Q. Would you please introduce yourself to the jury?

15 A. I am Officer Duboise with the Walterboro Police
16 Department.

17 Q. How long have you been with the Walterboro Police
18 Department?

19 A. Close to three years now.

20 Q. And what is your current position with the Walterboro
21 Police Department?

22 A. I am a Lance Corporal, also a canine handler.

23 Q. And prior to joining the Walterboro Police Department,
24 what did you do?

25 A. I worked for a family business doing automotive work,

DUBOISE - DIRECT EXAMINATION

1 12:34 PM 1 fixing cars.

2 12:34 PM 2 Q. And prior to that, what's your educational background?

3 12:34 PM 3 A. I got a bachelor's degree in business.

4 12:34 PM 4 Q. I want to direct your attention to March 31st, 2018. Do
5 you remember that day?

6 12:34 PM 6 A. I do.

7 12:34 PM 7 Q. And what were you doing on March 31st, 2018?

8 12:34 PM 8 A. We were conducting a safety checkpoint at Hiers Corner and
9 Center Street, me and three other officers.

10 12:34 PM 10 Q. And when you conduct this safety checkpoint, what are you
11 doing?

12 12:34 PM 12 A. Basically checking license, tags, making sure nobody is
13 speeding through the area, basically slow people down.

14 12:34 PM 14 Q. And when you're out on these patrols, do you run your body
15 camera the entire time?

16 12:34 PM 16 A. Not the entire time.

17 12:34 PM 17 Q. And why don't you do that?

18 12:35 PM 18 A. Usually battery power. We have the whole shift to operate
19 our batteries, so to preserve that battery power, we just turn
20 it on and off.

21 12:35 PM 21 Q. When do you turn it on?

22 12:35 PM 22 A. Usually during an encounter with a person, as far as
23 searching a vehicle, something --

24 12:35 PM 24 Q. So if you were issuing a citation or if you're -- if
25 you're searching somebody, you turn it on in that instance?

DUBOISE - DIRECT EXAMINATION

1 A. Correct.

2 Q. Let me ask you this. Did you turn your body camera on
3 when you searched Mr. Fishburne?

4 A. I was under the impression I did, but apparently not.

5 Q. Can you tell the jury, how do these body cameras work?
6 what decides whether they're on or off?

7 A. I have it with me. It's just a flush button on the front.
8 So you -- I mean, you barely touch it, and you don't know if
9 it's on or off unless you look at the screen and it's got a
10 little red light, and it tells you it's recording, and on that
11 day I had my safety vest on, so I couldn't see my camera.

12 Q. So you believe you intended to turn your camera on?

13 A. I did try to push it.

14 Q. Did the camera come on? Did you end up with any footage?

15 A. No footage.

16 Q. Okay. I do want to -- I do want to show you some footage,
17 what's been previously admitted as Government's Exhibit 4.

18 MR. SCHOEN: Can you bring up Government's Exhibit 4?

19 (Video played.)

20 MR. SCHOEN: Stop it right here.

21 (Video paused.)

22 BY MR. SCHOEN:

23 Q. Do you recognize what we're looking at here?

24 A. That is the car driven by Mr. Fishburne that day.

25 Q. This red car right up here?

DUBOISE - DIRECT EXAMINATION

1 A. Yes, sir.

2 Q. Okay. And who is this getting ready to open the door to
3 that car?

4 A. That is myself.

5 MR. SCHOEN: Okay. Let's play it a little more.

6 (Video resumed.)

7 MR. SCHOEN: All right. Pause right there.

8 (Video paused.)

9 BY MR. SCHOEN:

10 Q. What are you doing here?

11 A. Basically patting him down, because there was a -- an odor
12 of marijuana present in that vehicle, so --

13 Q. Okay. Go ahead.

14 A. Once I pulled him out, I just patted him down, checked his
15 pockets real fast, make sure there's no weapons or narcotics.

16 Q. Why did you -- why were you searching his vehicle in the
17 first place?

18 A. Due to the odor of marijuana present.

19 Q. Okay. So he pulls up to the traffic checkpoint. What
20 happens?

21 A. He rolls his window down about two, three inches, where I
22 can just barely make out the top of his head. He wasn't
23 hostile, but he did have a small attitude, just didn't want to
24 be there.

25 Q. Okay. And what did -- what did you detect when that

DUBOISE - DIRECT EXAMINATION

1 window went down just a little bit?

2 A. I could smell the odor of marijuana, and that's when I
3 asked him to pull off to the side of the road.

4 Q. Had you ever met Mr. Fishburne before this particular day?

5 A. This is the first encounter.

6 Q. Do you recognize Mr. Fishburne in the courtroom?

7 A. I do.

8 Q. And can you point him out?

9 A. (Indicating.)

10 Q. And can you describe what he's wearing, where he's
11 sitting?

12 A. Blue button up shirt with gold glasses.

13 MR. SCHOEN: Let the record reflect that the witness
14 has correctly identified the Defendant, Quentin John Fishburne.

15 THE COURT: Sure.

16 BY MR. SCHOEN:

17 Q. What did Mr. Fishburne say to you when you asked him to
18 pull over and -- so you could search his car?

19 A. He -- the only thing I can remember is, "If you find
20 anything in the car, it's not mine."

21 Q. He said, "If you find anything in this car, it's not
22 mine." What did that make you think?

23 A. I mean, just like anybody else, that pretty much screams
24 guilt, that I'm going to find something in that car.

25 MR. SCHOEN: All right. Let's watch a little more of

DUBOISE - DIRECT EXAMINATION

1 this video.

2 (video resumed.)

3 MR. SCHOEN: All right. Stop.

4 (video paused.)

5 BY MR. SCHOEN:

6 Q. what's in your hand?

7 A. It's a black handgun that I found under the driver's seat.

8 Q. Found under the driver's seat of this vehicle right here?

9 A. Yep.

10 Q. what are you doing with the gun right there?

11 A. I'm clearing the weapon to make sure there's no ammunition
12 in the chamber.

13 Q. Okay. Are you wearing gloves when you do this?

14 A. I am not.

15 Q. Okay. Why weren't you wearing gloves?

16 A. This particular day, I was in a spare car. You could see
17 it. It was the Crown Vic parked on the left side. I didn't
18 have all my gear with me, so I didn't have a pair of gloves
19 present.

20 Q. When you're starting to search his car, did you expect to
21 find a gun?

22 A. I did not expect to find a gun.

23 Q. So what is it that you're doing with that gun in your
24 hands?

25 A. Like I said, I'm clearing it to make sure it's clear of

DUBOISE - DIRECT EXAMINATION

1 ammunition so it won't go off on me or anybody else, and then I
2 actually run the serial number to make sure the weapon is
3 clear, not stolen.

4 Q. Okay. And what is the -- what was the status of the
5 weapon as far as being loaded?

6 A. It was loaded.

7 Q. Was it chambered?

8 A. I don't recall that, but it was --

9 Q. Loaded?

10 A. Yes, it was loaded.

11 Q. And how about whether or not it was reported stolen? Had
12 the gun been reported stolen?

13 A. It was clear. It was not reported stolen at that time.

14 MR. SCHOEN: Court's indulgence for just one moment.

15 (Pause.)

16 MR. SCHOEN: Your Honor, permission to approach about
17 what has previously been marked as Government's Exhibit 6?

18 THE COURT: Sure.

19 BY MR. SCHOEN:

20 Q. Can you identify what I've just handed you?

21 A. I can. It's the same weapon I'm holding in the screen.

22 Q. And how do you know that that is the same weapon that
23 you're holding in the screen?

24 A. Based off serial numbers.

25 Q. Do you have your report with you?

DUBOISE - DIRECT EXAMINATION

1 A. I do not.

2 MR. SCHOEN: Can I -- Your Honor, I'd request
3 permission to approach and hand Officer Duboise a portion of
4 his report from that day.

5 THE COURT: Sure.

6 BY MR. SCHOEN:

7 Q. What have I just handed you, Officer Duboise?

8 A. This is the incident report typed by myself.

9 Q. Does that -- why don't you take minute to review that
10 report. Does the serial number for the gun you found appear in
11 that report?

12 A. Yes, sir.

13 Q. And what's that serial number for us?

14 A. It's H, hotel; S, Sierra; R, Romeo, 7417.

15 Q. HSR7417, you said?

16 A. Yes, sir.

17 Q. Can you give that firearm a look and tell us what the
18 serial number on that is?

19 A. It's going to be the same serial number, HSR7417.

20 MR. SCHOEN: Your Honor, at this point the Government
21 would move Exhibit 6 into evidence.

22 MR. SHAHID: Subject to my prior objection, Your
23 Honor.

24 THE COURT: Sure. In evidence.

25 MR. SCHOEN: Permission to approach with Government's

DUBOISE - DIRECT EXAMINATION

1 Exhibit 7?

2 THE COURT: Sure. No problem.

3 MR. SCHOEN: Permission to retrieve and publish
4 Government's 6?

5 THE COURT: Sure.

6 MR. SCHOEN: Give that a look while I'm --

7 THE WITNESS: All right.

8 A JUROR: Hold it down a little lower.

9 BY MR. SCHOEN:

10 Q. Can you identify Government's Exhibit 7?

11 A. I can.

12 Q. What is Government's Exhibit 7?

13 A. This is the evidence bag with my handwriting on it with
14 seven rounds of .40 caliber ammunition inside.

15 MR. SCHOEN: Your Honor, the Government would move
16 Exhibit 7 into evidence.

17 MR. SHAHID: Subject to my objection.

18 THE COURT: Sure. In evidence.

19 BY MR. SCHOEN:

20 Q. Can you tell us, that .40 caliber ammunition, can you fire
21 that .40 caliber ammunition through that gun right there?

22 A. Yes, sir.

23 Q. So Government's Exhibit 7 is ammunition that is of a
24 proper caliber that can be fired through Government's Exhibit
25 6?

DUBOISE - DIRECT EXAMINATION

1 A. Yes, sir.

2 Q. who took the car?

3 A. I believe a family member showed up. At that time I was
4 taking Mr. Fishburne to the jail, so I'm not positive who took
5 the car.

6 MR. SCHOEN: Permission to approach and publish
7 evidence?

8 THE COURT: Sure.

9 (Pause.)

10 MR. SCHOEN: Brief indulgence, Your Honor.

11 THE COURT: Sure.

12 MR. SCHOEN: Thank you, Corporal Duboise. I don't
13 have any other questions for you at this time. Please answer
14 any questions from opposing counsel.

15 THE WITNESS: Yes, sir.

16 MR. SHAHID: Judge, you want to take a break now?

17 THE COURT: Just wait until after your
18 cross-examination.

19 MR. SHAHID: I'm sorry?

20 THE COURT: I'll just wait until after your
21 cross-examination, and then we'll go to lunch.

22 MR. SHAHID: I'm still not --

23 THE COURT: I'll just wait until after your
24 cross-examination, and then we'll go to lunch.

25 MR. SHAHID: Thank you, Judge.

DUBOISE - CROSS-EXAMINATION

1 THE COURT: You're welcome.

2 MR. SHAHID: The batteries in one of my hearing aids
3 died, so I apologize. It happens every now and then. That's
4 why I ask these witnesses to make sure they talk into the
5 microphone here.

6 THE COURT: No problem. No problem.

7 CROSS-EXAMINATION

8 BY MR. SHAHID:

9 Q. Officer Duboise, I'm Peter Shahid, and I represent
10 Mr. Fishburne. I'm going to ask you some questions about this
11 traffic stop.

12 A. Yes, sir.

13 MR. SHAHID: So if I can pull up the -- Judge, I can
14 do this one of two ways. I can use my own computer on
15 replaying these tapes, or I could ask the Government to help me
16 with that, whatever is easier for them. I don't mind.

17 THE COURT: Go ahead. She's already got it queued
18 up.

19 PARALEGAL: I just need to know what number.

20 COURTROOM DEPUTY: She's got it uploaded.

21 MS. HENDERSON: She just needs the numbers. She has
22 them. She just needs to know what number.

23 MR. SHAHID: Oh, 4. Sorry.

24 THE COURT: You want to pull up Exhibit 4?

25 MR. SHAHID: Yes, sir.

DUBOISE - CROSS-EXAMINATION

1 THE COURT: Okay. Thank you. There we go.

2 (Video played.)

3 MR. SHAHID: If you could just stop to right there
4 for one second.

5 (Video paused.)

6 BY MR. SHAHID:

7 Q. Officer, you see the license tag of that car?

8 A. Yes, sir.

9 Q. Okay. And right to the very left of that, seems to be an
10 item on the car or items on the car?

11 A. Yes, sir.

12 Q. And are those items the driver's license?

13 A. It appears so. Maybe a registration or insurance card.

14 Q. So when you encounter somebody at this checkpoint, the
15 purpose of that is to verify they have a valid driver's
16 license?

17 A. Correct.

18 Q. That they have proper insurance?

19 A. Correct.

20 Q. And proper registration for the car?

21 A. Correct.

22 Q. So at some point in time, you had the Camaro pull over to
23 the side of the road; is that correct?

24 A. Yes, sir.

25 Q. And prior to having the car pull over to the side of the

DUBOISE - CROSS-EXAMINATION

1 road, you had testified about the initial encounter with
2 Mr. Fishburne at the checkpoint?

3 A. Yes, sir.

4 Q. And you had asked at that point for his driver's license,
5 registration, and insurance information; is that correct?

6 A. Yes, sir.

7 Q. So at that point the information -- the items he gave you
8 at the initial encounter, he had the proper driver's license,
9 insurance card, and registration; is that correct?

10 A. I'm not sure if he had everything, but there is paperwork
11 on the trunk, yes.

12 Q. Officer, is there any reason to believe that information
13 he gave you at that point was incorrect or incomplete?

14 A. No, sir.

15 Q. That's a "no," correct?

16 A. Uh-huh.

17 Q. All right. And the purpose of the checkpoint as I
18 understand, sir, is to do just that, is to check those items.
19 If those things clear, the driver is supposed to be let go and
20 released?

21 A. Unless there's a deep smell of -- odor of marijuana.

22 Q. Well, back to my question to you. By the way, are you
23 chewing gum up there? Can you hear me okay, Officer?

24 A. Yes, sir.

25 Q. All right. So let me make sure I got all this correct.

DUBOISE - CROSS-EXAMINATION

1 12:51 PM That there's no information that you possess on March 31st
2 12:51 PM that -- at the point of initial contact, his driver's license,
3 12:51 PM insurance, or registration were all intact?

4 12:51 PM A. I'm not sure at that time. He was detained for the odor
5 12:51 PM of marijuana, and then his license was ran afterwards.

6 12:51 PM Q. Let me just go through this encounter with you initially.

7 12:51 PM A. Uh-huh.

8 12:51 PM Q. You don't have your body camera working --

9 12:51 PM A. Correct.

10 12:51 PM Q. -- is that correct? And I think what you told this jury
11 12:51 PM earlier that all you had to do was sort of look down and see if
12 12:51 PM a red light came on?

13 12:51 PM A. Yes, sir.

14 12:51 PM Q. And you didn't do that?

15 12:51 PM A. I'm wearing a safety vest in the picture.

16 12:51 PM Q. I'm asking you, sir, did you check to see if the red light
17 12:51 PM came on?

18 12:51 PM A. I'm not sure.

19 12:51 PM Q. You're not sure?

20 12:51 PM A. No, sir.

21 12:51 PM Q. Now, part of the policy with the Walterboro Police
22 12:51 PM Department is for you to activate your body camera when you
23 12:51 PM have an encounter with the public?

24 12:52 PM A. Sure, yes, sir.

25 12:52 PM Q. And part of that policy is also to include when you're

DUBOISE - CROSS-EXAMINATION

1 doing traffic stops like you're doing right now?

2 A. Yes, sir.

3 Q. So when I'm asking you these questions about whether or
4 not Mr. Fishburne or any driver when you have that encounter
5 properly produced a driver's license and insurance,
6 registration, one way of verifying that is if your camera was
7 operating properly?

8 A. Yes, sir.

9 Q. And all you had to do was look down and see if the red
10 light came on or off; is that correct?

11 A. Sure, correct.

12 Q. And you tell the jury today that the reason we don't have
13 that piece of information or that video or that evidence is
14 because you didn't bother to look and see if that red light was
15 on or off?

16 A. We do have video, but it's just not my video.

17 Q. It's not yours --

18 A. Correct.

19 Q. -- is that right? Because this video that we're looking
20 at right now came from another officer?

21 A. Yes, sir, but I'm present in that video.

22 Q. But this does not capture, Officer, the initial encounter
23 you had with Mr. Fishburne; is that correct?

24 A. Correct.

25 Q. Because you asked him to pull over to the side of the

DUBOISE - CROSS-EXAMINATION

1 road?

2 A. Correct.

3 Q. So at the initial encounter when you were engaging in the
4 conversation with him, you would have been able to pick up his
5 responses?

6 A. Sure, yes, sir.

7 Q. And that's something the jury could have heard today if
8 you had bothered to look and make sure your camera was working
9 or not working?

10 A. Yes, sir.

11 Q. And that may have been evidence helpful to him; is that
12 correct?

13 A. Sure, correct.

14 Q. But you didn't take the time to check and see if your
15 camera was working properly?

16 A. Yes, sir.

17 Q. Okay. Now, at the end of this encounter with
18 Mr. Fishburne, I think you testified earlier that the car was
19 released back to a family member; is that right?

20 A. Yes, sir. Like I said, I wasn't present when the car was
21 released.

22 Q. And you did a search of the car?

23 A. Yes, sir.

24 Q. And that's when you found this firearm?

25 A. Yes, sir.

DUBOISE - CROSS-EXAMINATION

1 12:54 PM Q. And the search of the firearm -- the location of the
2 firearm was underneath the seat?

3 12:54 PM A. Yes, sir, right where you adjust the seat, under the seat.

4 12:54 PM Q. So it wasn't clearly visible?

5 12:54 PM A. You had to look for it.

6 12:54 PM Q. You had to look for it?

7 12:54 PM A. Yes, sir.

8 12:54 PM Q. And you spent some time doing that?

9 12:54 PM A. I did.

10 12:54 PM Q. Okay. And I think at a prior testimony that you gave this
11 morning on direct examination, you were not wearing any gloves?

12 12:54 PM A. Correct.

13 12:54 PM Q. Now, if we run the tape a little bit further, we will see
14 that there is Sergeant Cook and another officer on the scene;
15 is that right?

16 12:54 PM A. Yes, sir.

17 12:54 PM Q. All right. And did you ask them if they had any gloves
18 you could wear?

19 12:54 PM A. I didn't.

20 12:54 PM Q. Now, as you were going through this checkpoint, Officer,
21 you know you're going to be encountering other individuals; is
22 that correct?

23 12:54 PM A. Sure, yes, sir.

24 12:54 PM Q. And you're going to be asking them for their driver's
25 license, insurance, or registration card. You're going to have

DUBOISE - CROSS-EXAMINATION

1 a hand-to-hand contact with these folks?

2 A. Yes, sir.

3 Q. And you didn't see reason at that point to have on gloves
4 either; did you?

5 A. It's not per policy that we wear gloves.

6 Q. I didn't ask you if it's policy or not, Officer. I'm
7 asking you, you didn't see the need as you were having
8 encounters with these other drivers or motorists whether or not
9 to have on gloves as you're exchanging their information?

10 A. No, sir, I don't see the need.

11 Q. All right. Now, did you take custody of this firearm?

12 A. I did.

13 Q. Did you turn it over to evidence?

14 A. I did.

15 Q. And at any point in time, Officer, did you ask for this
16 firearm to be checked for fingerprints?

17 A. I did not.

18 Q. And so today as we're standing -- having this hearing
19 today in court, this trial in court today, there's no
20 fingerprint evidence off this firearm; is there?

21 A. No, sir.

22 Q. And that was an opportunity for you to preserve the
23 evidence in such a way so that if, in fact, possession of the
24 firearm came into question, that's one way of determining
25 possession of the firearm, by fingerprints; is that correct?

DUBOISE - CROSS-EXAMINATION

1 A. Yes, sir.

2 Q. So that doesn't exist for us either; does it?

3 A. No, sir. At the time I didn't have the necessary need to
4 send it for fingerprinting.

5 Q. I'm sorry?

6 A. I didn't have the necessary need to send it off for
7 fingerprinting.

8 Q. That's based on your assumption; isn't it, Officer?

9 A. Yes, sir.

10 Q. That's something for the jury to decide, not for you?

11 A. Sure.

12 Q. Now, when you -- earlier in the video, we see that
13 you're --

14 MR. SHAHID: If you could just play this a little bit
15 longer.

16 PARALEGAL: Do you want me to back it up or keep
17 playing?

18 MR. SHAHID: I just want him coming out of the car.
19 (Video resumed.)

20 PARALEGAL: It's playing.

21 MR. SHAHID: Do you need this or --

22 MS. HENDERSON: No.

23 MR. SHAHID: You just scan it forward. That's all
24 I'm asking her. Just -- can you stop -- stop it right there.
25 (Video paused.)

DUBOISE - CROSS-EXAMINATION

1 12:57 PM BY MR. SHAHID:

2 12:57 PM Q. So you're doing a pat-down of Mr. Fishburne; is that
3 correct?

4 12:57 PM A. Yes, sir.

5 12:57 PM Q. And nothing is found on him when you do that pat-down?

6 12:57 PM A. At that time nothing was found.

7 12:57 PM Q. And so he's -- as we play the rest of the video, he walks
8 back to the back of the car and appears to be on the telephone;
9 is that right?

10 12:57 PM A. Yes, sir.

11 12:57 PM Q. When you did the search of the car, Officer, did you find
12 any marijuana residue inside the car?

13 12:57 PM A. I don't recall on the residue, but there was no actual
14 marijuana found inside the car.

15 12:57 PM Q. There was no marijuana found inside the car. It was found
16 on him; wasn't it?

17 12:57 PM A. Correct.

18 12:57 PM Q. All right. Now, let me just go back a little bit. The
19 reason that you had him pull over from your testimony is, from
20 what you said, you could smell marijuana coming out of the car;
21 is that correct?

22 12:57 PM A. Yes, sir.

23 12:57 PM Q. All right. And so there was no evidence of any marijuana
24 being burnt in the car?

25 12:58 PM A. I don't recall that.

DUBOISE - CROSS-EXAMINATION

1 12:58 PM 1 Q. well, if there was, would you have searched and looked for
2 it?

3 12:58 PM 3 A. Sure.

4 12:58 PM 4 Q. wouldn't that have been evidence, Officer --

5 12:58 PM 5 A. Sure.

6 12:58 PM 6 Q. -- of simple possession of marijuana if there was burnt
7 marijuana in the car?

8 12:58 PM 8 A. Burnt marijuana as in ashes?

9 12:58 PM 9 Q. Ashes, residue.

10 12:58 PM 10 A. I don't collect ashes, no, sir.

11 12:58 PM 11 Q. And you didn't check for that; did you?

12 12:58 PM 12 A. No, sir.

13 12:58 PM 13 Q. And if you were smelling marijuana coming out of the car,
14 that would have supported your contention that there was
15 marijuana coming out of the car?

16 12:58 PM 16 A. Yes, sir. He was present in said car, which --

17 12:58 PM 17 Q. He was in the car. I understand that.

18 12:58 PM 18 A. Yes, sir.

19 12:58 PM 19 Q. But there's nothing else to show residue inside the car --

20 12:58 PM 20 A. Yes, sir.

21 12:58 PM 21 Q. -- that indicated something was being smoked or used?

22 12:58 PM 22 A. The marijuana was present on his person. He was inside
23 the car.

24 12:58 PM 24 Q. On his person?

25 12:58 PM 25 A. Yes, sir.

DUBOISE - CROSS-EXAMINATION

1 Q. And that was found in the crotch of his pants, as I
2 understand it; is that correct?

3 A. Yes, sir.

4 Q. And it wasn't found immediately when you did the pat-down
5 of him; was it?

6 A. No, sir.

7 Q. Even though in your report that you prepared indicated
8 that it was found as part of the pat-down, isn't that correct?

9 MR. SCHOEN: Objection. Misstates the evidence.

10 THE COURT: I'll sustain the objection. You can use
11 the report. Let him read it.

12 MR. SHAHID: I can cross-examine him on that
13 question, Judge, on that issue.

14 THE COURT: well, if you give him the report, yeah.

15 MR. SHAHID: Sir?

16 THE COURT: If you give him the report.

17 MR. SHAHID: I intend to.

18 THE COURT: Okay. Sure.

19 BY MR. SHAHID:

20 Q. Is that correct, Officer?

21 A. I didn't state it was found during the traffic stop, no.

22 Q. I want to hand to you --

23 MR. SHAHID: Get this marked for identification.

24 THE COURT: What number is that?

25 MR. SHAHID: 1 or 2?

DUBOISE - CROSS-EXAMINATION

1 12:59 PM 1 COURTROOM DEPUTY: This is 2.

2 12:59 PM 2 THE COURT: 2 for identification only at this time.

3 12:59 PM 3 MR. SHAHID: You want to put the "2" on there?

4 1:00 PM 4 COURTROOM DEPUTY: Yes.

5 1:00 PM 5 BY MR. SHAHID:

6 1:00 PM 6 Q. I'm going to hand you, Officer, what's been marked for

7 1:00 PM 7 identification as Defendant's Exhibit Number 2.

8 1:00 PM 8 A. All right.

9 1:00 PM 9 Q. Is that a copy of the same thing that was previously shown

10 1:00 PM 10 to you by the Government, of your report?

11 1:00 PM 11 A. Yes, sir, it's a --

12 1:00 PM 12 Q. And don't you have written in there, Officer, that after

13 1:01 PM 13 you exited the vehicle, you performed a search of the -- exited

14 1:01 PM 14 the vehicle, and his person was searched, and he had a small

15 1:01 PM 15 bag of marijuana inside his pants?

16 1:01 PM 16 A. I didn't say "and". There's a period. "His person was

17 1:01 PM 17 searched," period. "He had a small bag of marijuana."

18 1:01 PM 18 Q. "He exited the vehicle, and his person was searched. He

19 1:01 PM 19 had a small bag of marijuana inside his pants leg, crotch;" is

20 1:01 PM 20 that correct?

21 1:01 PM 21 A. Yes, sir.

22 1:01 PM 22 Q. And then the next entry is, "A search was also done of the

23 1:01 PM 23 vehicle to find a Smith & Wesson firearm?"

24 1:01 PM 24 A. Yes, sir.

25 1:01 PM 25 Q. So in the chronology of events as you're reporting on

DUBOISE - CROSS-EXAMINATION

1 there, you're reporting that the car pulled over, he exited the
2 vehicle, you did a pat-down, found the marijuana, then you
3 searched the car and found a gun in the way that report is
4 written?

5 A. It could be perceived that way, yes, sir.

6 Q. I'm sorry?

7 A. It can be perceived that way, yes, sir.

8 Q. I'm not asking perception, Officer. I am asking that is
9 written in your report?

10 A. Yes, sir.

11 Q. Clearly, Officer, that's not what happened, because we
12 clearly see on the video that he's returned to the back of the
13 car.

14 A. Yes, sir.

15 Q. And he's free -- I mean not free, but he's out there while
16 you and Officer -- Sergeant Cook are searching the car?

17 A. Sure, yes, sir.

18 Q. Now, Officer Duboise, to do a checkpoint, you've got to go
19 through some procedures of having that done; is that correct?

20 A. Yes, sir, I don't handle that. Supervisors do.

21 Q. And that report that was shown to you as -- for
22 identification Number 2, that is the only report that was
23 prepared by you in preparation for this checkpoint?

24 A. Afterwards, yes.

25 Q. Okay. And there's no indication at all whether or not

DUBOISE - CROSS-EXAMINATION

1 y'all followed the proper procedure --

2 MR. SCHOEN: Objection, Your Honor. This is totally
3 irrelevant.

4 THE COURT: What is it to make more or less likely in
5 this case?

6 MR. SHAHID: I think, Judge, it goes to the
7 information of what he followed or didn't follow in
8 preparation, because he's -- his testimony is about his
9 encounter this -- with the Defendant and what took place along
10 those lines, so what happened beforehand I think is relevant
11 for the jury to understand and be aware of.

12 THE COURT: Yes. Go ahead.

13 MR. SHAHID: Thank you.

14 BY MR. SHAHID:

15 Q. Now, in order to do a checkpoint, Officer, you've got to
16 follow certain process and procedures; is that correct?

17 A. Yes, sir. I don't set up the checkpoints.

18 Q. I'm sorry?

19 A. I don't set up the checkpoints, but yes.

20 Q. But there is a proper procedure and policy that is in
21 place for that to occur; is that correct?

22 A. For supervisors, yes.

23 Q. Are you familiar with that policy and procedure?

24 A. I am not, because I'm not a supervisor.

25 Q. Were you a sworn officer with the Walterboro Police

DUBOISE - CROSS-EXAMINATION

1 : 0 4 P M 1 Department back when this search took place?

1 : 0 4 P M 2 A. Yes, sir.

1 : 0 4 P M 3 MR. SHAHID: May I have this marked for
1 : 0 4 P M 4 identification Number 3, please?

1 : 0 4 P M 5 BY MR. SHAHID:

1 : 0 4 P M 6 Q. I'm going to hand you what I've had marked as Defendant's
1 : 0 4 P M 7 Exhibit Number 3 and ask if you're familiar with that policy?

1 : 0 4 P M 8 A. Yes, sir.

1 : 0 4 P M 9 Q. Now this policy is -- deals with checkpoints; is that
1 : 0 4 P M 10 correct?

1 : 0 4 P M 11 A. Traffic safety checkpoints, yes, sir.

1 : 0 5 P M 12 Q. And does that policy apply to all individuals involved
1 : 0 5 P M 13 with the Walterboro Police Department?

1 : 0 5 P M 14 A. Yes, sir.

1 : 0 5 P M 15 Q. And you were engaged in that process of being involved in
1 : 0 5 P M 16 that checkpoint; is that right?

1 : 0 5 P M 17 A. Not setting it up, but I did run the checkpoint, yes, sir.

1 : 0 5 P M 18 Q. Not in setting it up, but enforcing it?

1 : 0 5 P M 19 A. Yes, sir.

1 : 0 5 P M 20 Q. Being engaged in it; is that correct?

1 : 0 5 P M 21 A. Yes, sir.

1 : 0 5 P M 22 Q. Now the report I asked you to identify earlier has nothing
1 : 0 5 P M 23 in that report to indicate whether or not that there were
1 : 0 5 P M 24 checkpoint signs posted in compliance with that report; are
1 : 0 5 P M 25 there?

DUBOISE - CROSS-EXAMINATION

1 : 0 5 P M 1 A. No, sir.

1 : 0 5 P M 2 Q. And according to the policy, there are supposed to be
1 : 0 5 P M 3 signs warning motorists in advance?

1 : 0 5 P M 4 MR. SCHOEN: Objection, Your Honor.

1 : 0 5 P M 5 THE COURT: I think I'll sustain the objection now.
1 : 0 5 P M 6 We're getting way afield of what we're here for.

1 : 0 5 P M 7 MR. SHAHID: Judge, I think --

1 : 0 5 P M 8 THE COURT: I already ruled. I don't care what you
1 : 0 6 P M 9 think, okay?

1 : 0 6 P M 10 MR. SHAHID: Yes, sir. I understand. I'm presuming,
1 : 0 6 P M 11 Judge, your ruling would prohibit me from asking him any more
1 : 0 6 P M 12 questions concerning the policy on the checkpoint itself?

1 : 0 6 P M 13 THE COURT: That's correct.

1 : 0 6 P M 14 MR. SHAHID: Can I proffer --

1 : 0 6 P M 15 THE COURT: Not now. You can proffer at the proper
1 : 0 6 P M 16 time, yes.

1 : 0 6 P M 17 MR. SHAHID: Excuse me. I'm seeing if I have any
1 : 0 6 P M 18 other questions.

1 : 0 6 P M 19 THE COURT: No problem.

1 : 0 6 P M 20 (Pause.)

1 : 0 6 P M 21 BY MR. SHAHID:

1 : 0 6 P M 22 Q. Officer Duboise, I think that it already came out in the
1 : 0 6 P M 23 testimony, but this checkpoint was in effect for about an hour,
1 : 0 7 P M 24 hour and a half; is that about right?

1 : 0 7 P M 25 A. Yes, sir, about an hour and a half.

DUBOISE - REDIRECT EXAMINATION

1 : 0 7 P M 1 Q. And you had encounters with about maybe three or four
1 : 0 7 P M 2 other people in this process?

1 : 0 7 P M 3 A. There was probably 50, 60 people. I mean, there was
1 : 0 7 P M 4 steady cars coming through the whole time. I don't have an
1 : 0 7 P M 5 exact number for you, no.

1 : 0 7 P M 6 Q. And maybe three or four that you issued a citation for for
1 : 0 7 P M 7 various reasons; does that sound about right?

1 : 0 7 P M 8 A. Yes, sir.

1 : 0 7 P M 9 Q. And as soon as you had the encounter with Mr. Fishburne,
1 : 0 7 P M 10 right after that point is when you ceased using the checkpoint;
1 : 0 7 P M 11 is that right?

1 : 0 7 P M 12 A. Yes, sir.

1 : 0 7 P M 13 MR. SHAHID: Thank you. Nothing further at this
1 : 0 7 P M 14 time, Judge.

1 : 0 7 P M 15 MR. SCHOEN: Brief redirect?

1 : 0 7 P M 16 THE COURT: Sure.

1 : 0 7 P M 17 REDIRECT EXAMINATION

1 : 0 7 P M 18 BY MR. SCHOEN:

1 : 0 7 P M 19 Q. Just wanted to clarify a couple of things. First of all,
1 : 0 7 P M 20 when you -- when Mr. Fishburne pulled up, what did you smell?

1 : 0 7 P M 21 A. Marijuana.

1 : 0 7 P M 22 Q. Do you have experience dealing with marijuana as a law
1 : 0 7 P M 23 enforcement officer?

1 : 0 7 P M 24 A. I do. It's got a very unique smell.

1 : 0 8 P M 25 Q. And are you confident what you smelled was marijuana?

DUBOISE - RECROSS-EXAMINATION

1 A. Yes, sir.

2 Q. Did you ultimately find marijuana on Mr. Fishburne's
3 person?

4 A. Yes, sir.

5 Q. Opposing counsel took issue with the way that your report
6 was written. Did you intend the report to be confusing?

7 A. No, sir.

8 Q. Did you intend the report to be misleading?

9 A. No, sir.

10 Q. Did you intend not to turn your body camera on?

11 A. No, sir.

12 MR. SCHOEN: Thank you. No further questions.

13 RECROSS-EXAMINATION

14 BY MR. SHAHID:

15 Q. Officer, you do a report in order to provide a document so
16 that when it comes time to examine what took place, we got a
17 report of what happened; is that correct?

18 A. Yes, sir, sure.

19 Q. And you want that report to be accurate?

20 A. Yes, sir.

21 Q. To the best of your ability; is that correct?

22 A. Yes, sir.

23 Q. So in the sequence of things, that's an important part of
24 all of this; isn't it?

25 A. Yes, sir.

DUBOISE - RECROSS-EXAMINATION

1 MR. SHAHID: Nothing else, Your Honor. Thank you
2 very much.

3 THE COURT: Thank you very much. You're excused.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURT: Ladies and gentlemen, you can go to
7 lunch. Don't discuss the case among yourselves. Don't let
8 anybody discuss it with you. We'll come back. We'll start
9 again about 2:30, all right?

10 (Jury out at 1:09 p.m.)

11 THE COURT: Okay. You want to make your proffer at
12 this time?

13 MR. SHAHID: Judge, I was just going to go back over
14 with him the policy --

15 THE COURT: You were going to go do what you did at
16 the suppression hearing?

17 MR. SHAHID: Pretty much.

18 THE COURT: Okay.

19 MR. SHAHID: That would summarize it, yes. Maybe not
20 to the great detail we did a couple of weeks ago, but something
21 along those same lines.

22 THE COURT: But that's not a jury issue. That's my
23 issue, and I've already decided on it, so that's why I
24 sustained the objection.

25 MR. SHAHID: Just making my record, Judge.

1 THE COURT: That's my story, and I'm sticking to it.
2 we'll see y'all at 2:30. Thank you.

3 MR. SCHOEN: Your Honor, for planning purposes, the
4 Government has two witnesses left.

5 THE COURT: All right.

6 MR. SCHOEN: If we could before the jury comes back
7 in have a few minutes to discuss with Your Honor the issue with
8 the letter --

9 THE COURT: Okay.

10 MR. SCHOEN: -- I think that would be helpful.

11 THE COURT: All right. So why don't you come back at
12 2:15?

13 MR. SCHOEN: Yes, Your Honor.

14 MR. SHAHID: What time?

15 THE COURT: 2:15.

16 MR. SHAHID: I have batteries back in my office. I'm
17 going to replace my batteries, I promise.

18 THE COURT: So we'll see y'all at 2:15. The jury
19 comes back at 2:30.

20 (Recess from 1:10 p.m. to 2:19 p.m.)

21 THE COURT: Take your seats. Thanks. Okay.

22 Mr. Schoen, you wanted to --

23 MR. SCHOEN: Your Honor, I wanted to propose a
24 potential resolution to the issue regarding this letter. I
25 understand the point Mr. Shahid is making. I think the law is

2 : 1 9 P M 1 fairly clear that I have to be given the opportunity to
2 : 1 9 P M 2 cross-examine a witness in order for the unavailability to
2 : 1 9 P M 3 allow that letter to come in. But I don't -- I don't
2 : 1 9 P M 4 necessarily object to allowing the letter in provided that I'm
2 : 1 9 P M 5 given the opportunity through the agent to establish the
2 : 1 9 P M 6 testimony that I would have established had I been given the
2 : 2 0 P M 7 opportunity to cross-examine her in a similar type of way, and
2 : 2 0 P M 8 so provided that we can get into the evidence about her
2 : 2 0 P M 9 recanting the statement and the statements that she made to
2 : 2 0 P M 10 Special Agent Callahan and that that evidence would be allowed
2 : 2 0 P M 11 in, and provided the fact that we can go into what it is he
2 : 2 0 P M 12 confronted her with, which is not just this previous purchase
2 : 2 0 P M 13 to Quentin Fishburne. It's the fact that she bought yet
2 : 2 0 P M 14 another gun, and that other gun was found in the presence of
2 : 2 0 P M 15 somebody who wasn't her and matched another shooting.

2 : 2 0 P M 16 I don't think there is any question if she had
2 : 2 0 P M 17 taken the stand in that bond hearing, I would have absolutely
2 : 2 0 P M 18 cross-examined her on that. And so I don't -- again, I don't
2 : 2 0 P M 19 object if we want to bring that letter in. I just have to have
2 : 2 0 P M 20 a full opportunity to develop the evidence, and quite frankly.
2 : 2 0 P M 21 Judge, because of the previous rulings, we don't have all of
2 : 2 0 P M 22 those witnesses here. I have an agent who knows about it, and
2 : 2 0 P M 23 I think I can offer that evidence as to impeach her statement
2 : 2 0 P M 24 in the same kind of way I would cross-examine her about it, but
2 : 2 1 P M 25 that's what I'm willing to propose, and I understand the Court

2 : 2 1 P M 1 could overrule me and let it in on very different terms, but
2 : 2 1 P M 2 that seems to me to be a fair way to allow Mr. Fishburne --
2 : 2 1 P M 3 allow this jury to have all this evidence, they evaluate it,
2 : 2 1 P M 4 and allow us not to have that as a major issue in the case.

2 : 2 1 P M 5 THE COURT: Okay. What you say, Mr. Shahid? Any
2 : 2 1 P M 6 objection to that?

2 : 2 1 P M 7 MR. SHAHID: Well, that's sort of what I think is
2 : 2 1 P M 8 going to be a little bit of a dilemma. This is what I
2 : 2 1 P M 9 understand happened. So Ms. Ellison appears for this bond
2 : 2 1 P M 10 hearing in April -- yeah, April of 2018. She presents to
2 : 2 1 P M 11 Mr. Fishburne's lawyer at the time a notarized statement
2 : 2 1 P M 12 saying, "The gun is mine, not his," words to that effect. At
2 : 2 1 P M 13 some point after that, I think Agent Callahan went to go see
2 : 2 2 P M 14 her at his -- at her mother's house and confronted her with the
2 : 2 2 P M 15 purported statement and some other information before she was
2 : 2 2 P M 16 charged as a defendant in this case.

2 : 2 2 P M 17 So the Government is willing to stipulate to the
2 : 2 2 P M 18 admission of that statement if they are allowed to present
2 : 2 2 P M 19 information about another gun that is not related to
2 : 2 2 P M 20 Mr. Fishburne. So I'm not sure, first, how that is, in fact,
2 : 2 2 P M 21 impeaching her. If she was live and in person in that chair,
2 : 2 2 P M 22 whether or not that would -- is something you could
2 : 2 2 P M 23 cross-examine her, because she's talking about a gun that she
2 : 2 2 P M 24 bought in -- this third gun, this Bersa. He's talking about,
2 : 2 2 P M 25 you know, "You bought this gun for, I guess, illegal purposes,"

2 : 2 2 P M 1 consistent with his conspiracy Indictment. I'm not sure if
2 : 2 3 P M 2 that lays the foundation for proper cross-examination to get
2 : 2 3 P M 3 into that gun at all, particularly since it's not associated
2 : 2 3 P M 4 with my client in any way, and the prejudicial impact of
2 : 2 3 P M 5 that --

2 : 2 3 P M 6 THE COURT: well, I mean, they've already -- I think
2 : 2 3 P M 7 Mr. Schoen said in his opening statement we're only dealing
2 : 2 3 P M 8 here with two guns, and I think somebody may have mentioned the
2 : 2 3 P M 9 third gun. I don't know.

2 : 2 3 P M 10 MR. SCHOEN: No, I mentioned a third crime scene, but
2 : 2 3 P M 11 not --

2 : 2 3 P M 12 THE COURT: That's right. I'm sorry.

2 : 2 3 P M 13 MR. SHAHID: Third crime scene.

2 : 2 3 P M 14 THE COURT: So you're in a dilemma.

2 : 2 3 P M 15 MR. SHAHID: I just think the statement should come
2 : 2 3 P M 16 in as it is.

2 : 2 3 P M 17 THE COURT: The research we've done says the
2 : 2 3 P M 18 statement doesn't come in.

2 : 2 3 P M 19 MR. SHAHID: I'm sorry?

2 : 2 3 P M 20 THE COURT: The research we've done says the
2 : 2 3 P M 21 statement doesn't come in.

2 : 2 3 P M 22 MR. SHAHID: Does not come in?

2 : 2 3 P M 23 THE COURT: Does not come in. Now, if you want to
2 : 2 3 P M 24 accept the Government's offer, that's fine with me, but absent
2 : 2 3 P M 25 doing that, I think I've got -- she's unavailable as witness.

2 : 2 4 P M 1 She's a defendant. She can't be subpoenaed, and if she were
2 : 2 4 P M 2 subpoenaed, she would take the Fifth Amendment. She told us
2 : 2 4 P M 3 that here this morning. So she's unavailable as a witness, and
2 : 2 4 P M 4 if she were available, then the Government has the right under
2 : 2 4 P M 5 801(d)(2)(C), (D) or (E), to put in evidence to cross-examine
2 : 2 4 P M 6 her -- I mean to put in other evidence that shows the
2 : 2 4 P M 7 untruthfulness of that statement.

2 : 2 4 P M 8 So, Mr. Schoen, what you're taking about is
2 : 2 4 P M 9 letting him put that statement in in his case.

2 : 2 4 P M 10 MR. SCHOEN: Yeah, or, I mean --

2 : 2 4 P M 11 THE COURT: And then calling Callahan tomorrow.

2 : 2 4 P M 12 MR. SCHOEN: I can call him back again or -- I don't
2 : 2 4 P M 13 want to -- I don't want it to be said that the Government was
2 : 2 4 P M 14 the one that -- I don't know that it really matters, I mean,
2 : 2 4 P M 15 who puts it in, but I -- I want it to be very clear on the
2 : 2 4 P M 16 record that he's the one who wants it in. I don't want to
2 : 2 5 P M 17 be -- I don't want the Fourth Circuit to come back and say,
2 : 2 5 P M 18 "You shouldn't have put that in. You weren't allowed to put
2 : 2 5 P M 19 that in, Government."

2 : 2 5 P M 20 THE COURT: So you're going to put that in in your
2 : 2 5 P M 21 case if you're allowed to do it.

2 : 2 5 P M 22 MR. SHAHID: I just want to make this point very
2 : 2 5 P M 23 clear. The Government is going to be allowed to offer
2 : 2 5 P M 24 information about her purchase of another firearm, the Bersa
2 : 2 5 P M 25 firearm, and that Agent Callahan had a conversation with her,

2 : 2 5 P M 1 interview with her, and she recanted? I want to be able to get
2 : 2 5 P M 2 into the details of the conversation that Agent Callahan had
2 : 2 5 P M 3 with her, and I want to be able to get into the fact -- part of
2 : 2 5 P M 4 the way that conversation went down, what happened was there
2 : 2 5 P M 5 was an initial bond hearing, and Mr. Fishburne appears, and we
2 : 2 5 P M 6 get some notice that Ms. Ellison intends to offer this letter,
2 : 2 5 P M 7 so Judge Baker gave us three or four days. This agent went and
2 : 2 5 P M 8 did his digging, and what he found in those days was quite
2 : 2 5 P M 9 impressive with all of these purchases. Then when she came
2 : 2 5 P M 10 back, I said, "Judge, please, let's put her on the stand. I
2 : 2 5 P M 11 have some questions for her," and the Judge wouldn't allow me
2 : 2 6 P M 12 to do that because she was concerned about the rights of
2 : 2 6 P M 13 Ms. Ellison as a potential defendant, and so they just had the
2 : 2 6 P M 14 letter basically read in court, and she said, "I'll take it for
2 : 2 6 P M 15 what it's worth."

2 : 2 6 P M 16 And then Special Agent Callahan went and talked
2 : 2 6 P M 17 with Ms. Ellison, and what he confronted her with was the total
2 : 2 6 P M 18 picture. It wasn't just the gun from Mr. Fishburne. He
2 : 2 6 P M 19 said -- and correct me if I'm wrong. He said, "Listen, I know
2 : 2 6 P M 20 you've bought three guns, and two of those guns ended up with
2 : 2 6 P M 21 Quentin Fishburne, and another one of them ended up with
2 : 2 6 P M 22 somebody else who was being chased by the Walterboro Police
2 : 2 6 P M 23 Department, and it wasn't you, and I also know that gun --
2 : 2 6 P M 24 there's a ballistic link between that gun and a shooting where
2 : 2 6 P M 25 your husband was a suspect." And at that point after she heard

2 : 2 6 P M 1 that full litany of, "Here's what I know," it's at that point
2 : 2 6 P M 2 she says, "Can I recant?"

2 : 2 6 P M 3 THE COURT: Okay.

2 : 2 6 P M 4 MR. SCHOEN: "I want to tell you the truth."

2 : 2 6 P M 5 MR. SHAHID: And --

2 : 2 6 P M 6 THE COURT: It's going to be clear on the record if
2 : 2 6 P M 7 you are allowed to call Agent Callahan that the Bersa has no
2 : 2 7 P M 8 connection whatsoever with Mr. Fishburne.

2 : 2 7 P M 9 MR. SCHOEN: Absolutely. And, Judge, I would even be
2 : 2 7 P M 10 able -- I'd be willing to say that -- and I think the records
2 : 2 7 P M 11 suggest that what we have is that we don't think the unknown
2 : 2 7 P M 12 person who was being pursued was Mr. Fishburne. They believe
2 : 2 7 P M 13 it was an African-American male, but they don't think it was
2 : 2 7 P M 14 Mr. Fishburne.

2 : 2 7 P M 15 THE COURT: Okay.

2 : 2 7 P M 16 MR. SHAHID: And one other point I want to make sure
2 : 2 7 P M 17 that we're clear on: That even though Ms. Ellison was not
2 : 2 7 P M 18 named as a defendant, because I don't think the Indictment had
2 : 2 7 P M 19 come out yet, she was a target of the Government's
2 : 2 7 P M 20 investigation to this case when Agent Callahan confronted her.

2 : 2 7 P M 21 THE COURT: You mean at the time of the bond hearing
2 : 2 7 P M 22 where Magistrate Judge Baker said, "No, we're not going to --
2 : 2 7 P M 23 you can't testify. You've got too much at stake"?

2 : 2 7 P M 24 MR. SHAHID: Because she may be subjected to federal
2 : 2 7 P M 25 prosecution.

2 : 2 7 P M 1 THE COURT: All right. So essentially Magistrate
2 : 2 7 P M 2 Judge Baker took the Fifth Amendment -- told her to take the
2 : 2 7 P M 3 Fifth Amendment, I would guess.

2 : 2 7 P M 4 MR. SHAHID: well, yes.

2 : 2 7 P M 5 THE COURT: Okay.

2 : 2 7 P M 6 MR. SHAHID: She saw what was going on.

2 : 2 8 P M 7 THE COURT: So she took Magistrate Judge Baker's
2 : 2 8 P M 8 advice and didn't testify, and there was no reason -- there was
2 : 2 8 P M 9 no way for him to cross-examine someone who doesn't testify.

2 : 2 8 P M 10 MR. SHAHID: The dilemma that we're having now is
2 : 2 8 P M 11 what Judge Baker recognized in April 2018 potentially.

2 : 2 8 P M 12 THE COURT: Okay. So it's your choice. What do you
2 : 2 8 P M 13 want to do?

2 : 2 8 P M 14 MR. SHAHID: Can I consult with my client?

2 : 2 8 P M 15 THE COURT: Sure. No problem. It's his life, like I
2 : 2 8 P M 16 say.

2 : 2 9 P M 17 (Pause.)

2 : 2 9 P M 18 MR. SHAHID: We'll do that, Judge.

2 : 2 9 P M 19 THE COURT: Do what?

2 : 2 9 P M 20 MR. SHAHID: We'll introduce --

2 : 2 9 P M 21 THE COURT: You'll introduce the statement in your
2 : 2 9 P M 22 case, and then you can call Callahan in reply.

2 : 2 9 P M 23 MR. SCHOEN: Call him back. I don't know from just a
2 : 2 9 P M 24 mechanics standpoint how it's going to work. I'm not sure what
2 : 2 9 P M 25 witness he can get it in through. I can ask Callahan.

2 : 2 9 P M 1 Callahan was at the hearing, so we can put it in through

2 : 2 9 P M 2 Callahan. In that case, do you want me just to ask him --

2 : 2 9 P M 3 THE COURT: Or when Mr. Shahid cross-examines Officer
2 : 2 9 P M 4 Callahan, he can say, "Didn't she give this statement," and he
2 : 2 9 P M 5 can move it into evidence through Callahan, and then you can
2 : 2 9 P M 6 explain it. He doesn't have to recall him. How does that
2 : 2 9 P M 7 sound?

2 : 2 9 P M 8 MR. SHAHID: I think that's good.

2 : 2 9 P M 9 MR. SCHOEN: Can I confer with co-counsel real
2 : 3 0 P M 10 quickly?

2 : 3 0 P M 11 THE COURT: Sure.

2 : 3 0 P M 12 (Pause.)

2 : 3 0 P M 13 MR. SCHOEN: The one thing we're a little bit worried
2 : 3 0 P M 14 about, Judge, we don't want the impression given to the jury
2 : 3 0 P M 15 we're trying to hide this. We're kind of coming forward and
2 : 3 0 P M 16 saying, "Hey, we'll let you have it." I'm trying to think of
2 : 3 0 P M 17 the best way to do this in a way that makes sense.

2 : 3 0 P M 18 THE COURT: That's the skill of a trial lawyer. I
2 : 3 1 P M 19 mean it seems to me that if you were to put it in through Agent
2 : 3 1 P M 20 Callahan, you could thereafter explain, ask him the questions
2 : 3 1 P M 21 about recantation.

2 : 3 1 P M 22 MR. SCHOEN: So as long as the record is clear that
2 : 3 1 P M 23 that is being done without the defense -- without any objection
2 : 3 1 P M 24 from the defense, and I don't want -- I don't want to have an
2 : 3 1 P M 25 appeal where I'm being attacked for putting in the letter.

2 : 3 1 P M 1 THE COURT: Sure. So what I propose, Mr. Shahid, is
2 : 3 1 P M 2 when Mr. Schoen calls Agent Callahan, he's going to be -- he
2 : 3 1 P M 3 will -- he will put in that letter. Okay? That you want in.
2 : 3 1 P M 4 And then he will be allowed to go ahead and have Officer
2 : 3 1 P M 5 Callahan testify as to the circumstances of her recantation.
2 : 3 1 P M 6 Is that okay with you?

2 : 3 1 P M 7 MR. SHAHID: So you're going to introduce the letter?

2 : 3 1 P M 8 THE COURT: Yeah.

2 : 3 1 P M 9 MR. SHAHID: And I think --

2 : 3 1 P M 10 THE COURT: Make it a Court's exhibit. I don't care
2 : 3 1 P M 11 whose exhibit it is.

2 : 3 1 P M 12 MR. SHAHID: We can make it a Court exhibit?

2 : 3 1 P M 13 MR. SCHOEN: Sure. That's great.

2 : 3 1 P M 14 MR. SHAHID: Judge, I think the record is very clear
2 : 3 1 P M 15 about this, but prior to -- part of what we heard this morning
2 : 3 2 P M 16 is she is unavailable. I think for the purposes of all of
2 : 3 2 P M 17 this, the reason we're going through this exercise is she is a
2 : 3 2 P M 18 co-defendant. She's been indicted. She's unavailable because
2 : 3 2 P M 19 of all of --

2 : 3 2 P M 20 THE COURT: I found based on the testimony this
2 : 3 2 P M 21 morning and Mr. Geel and based on the fact that she's still a
2 : 3 2 P M 22 potential defendant that she is not under -- could not be
2 : 3 2 P M 23 subpoenaed, and that she is therefore unavailable because she
2 : 3 2 P M 24 could not be subpoenaed, and if she were subpoenaed, she would
2 : 3 2 P M 25 take the Fifth Amendment, so she's unavailable.

2 : 3 2 P M 1 MR. SHAHID: Do you want to go ahead and pre-mark
2 : 3 2 P M 2 this now?

2 : 3 2 P M 3 THE COURT: We can make it Court's Exhibit 1. Is
2 : 3 2 P M 4 that okay?

2 : 3 2 P M 5 MR. SCHOEN: Sure.

2 : 3 2 P M 6 THE COURT: So that's what y'all want to do; is that
2 : 3 2 P M 7 right, Mr. Schoen, Mr. Shahid?

2 : 3 2 P M 8 MR. SHAHID: That's -- that's good for me.

2 : 3 2 P M 9 MR. SCHOEN: And just to make the record clear, I'm
2 : 3 2 P M 10 not going to run into a hearsay objection or any of those type
2 : 3 2 P M 11 objections to the fact that I'm having Special Agent Callahan
2 : 3 3 P M 12 summarize the situation with the Bersa for impeachment
2 : 3 3 P M 13 purposes? Again, we're not offering it against him.

2 : 3 3 P M 14 THE COURT: Just for impeachment of the statement
2 : 3 3 P M 15 purposes, recantation.

2 : 3 3 P M 16 MR. SHAHID: And has nothing to do with
2 : 3 3 P M 17 Mr. Fishburne?

2 : 3 3 P M 18 THE COURT: And if you want me to instruct the jury
2 : 3 3 P M 19 at the time that you -- that they mention the Bersa that the
2 : 3 3 P M 20 Bersa has nothing to do with Mr. Fishburne at all, I'd be glad
2 : 3 3 P M 21 to do that.

2 : 3 3 P M 22 MR. SHAHID: I think we need that, Judge.

2 : 3 3 P M 23 THE COURT: Do you need it at the end, or do you need
2 : 3 3 P M 24 it after this testimony?

2 : 3 3 P M 25 MR. SCHOEN: It can be done in the charge. We'd ask

2 : 3 3 P M 1 for instruction with that that it can be used to evaluate the
2 : 3 3 P M 2 credibility of Ms. Ellison.

2 : 3 3 P M 3 THE COURT: Right. All right. Okay. Is everybody
2 : 3 3 P M 4 back, Catina?

2 : 3 3 P M 5 COURTROOM DEPUTY: Yes.

2 : 3 3 P M 6 THE COURT: Yes, sir?

2 : 3 3 P M 7 MR. SHAHID: And, Judge, just for the Court's
2 : 3 3 P M 8 records, because the copies don't show this, but it appears
2 : 3 3 P M 9 that that statement was notarized. It has a notary seal on it,
2 : 3 3 P M 10 so -- and the copies don't reflect that as well.

2 : 3 3 P M 11 THE COURT: I think everybody agrees that was a
2 : 3 3 P M 12 notarized statement.

2 : 3 4 P M 13 MR. SHAHID: Yes, Your Honor.

2 : 3 4 P M 14 THE COURT: So who's your next witness, Mr. Schoen?

2 : 3 4 P M 15 MR. SCHOEN: Special Agent Callahan.

2 : 3 4 P M 16 THE COURT: Okay. So Special Agent Callahan is going
2 : 3 4 P M 17 to come up. He's going to testify. You're going to put
2 : 3 4 P M 18 Court's Exhibit 1 into evidence, and then he's going to be
2 : 3 4 P M 19 allowed to explain his conversation with the affiant and her
2 : 3 4 P M 20 circumstances of her recanting that statement. Is that a fair
2 : 3 4 P M 21 summary?

2 : 3 4 P M 22 MR. SHAHID: Yes, sir.

2 : 3 4 P M 23 THE COURT: I can't hear you when you shake your head
2 : 3 4 P M 24 from here. Next to you, I could.

2 : 3 4 P M 25 MR. SHAHID: I'll back up. I can hear very well now.

2 : 3 4 P M 1 THE COURT: Okay.

2 : 3 4 P M 2 MR. SHAHID: Judge, I had subpoenaed several
2 : 3 4 P M 3 witnesses based on your ruling earlier before our lunch break
2 : 3 4 P M 4 about -- those witnesses were going to talk about the
2 : 3 4 P M 5 checkpoint issue. The only other witness who does not fit into
2 : 3 4 P M 6 that category was the -- who we believe the other occupant of
2 : 3 4 P M 7 the car in 2014, and we're trying to run him down. We're going
2 : 3 5 P M 8 to run him down.

2 : 3 5 P M 9 THE COURT: All right. So we'll go ahead and finish
2 : 3 5 P M 10 the Government's case today, and then we'll either -- you can
2 : 3 5 P M 11 start your case tomorrow morning if you run this person down,
2 : 3 5 P M 12 and then we can argue and charge tomorrow afterwards. How does
2 : 3 5 P M 13 that sound?

2 : 3 5 P M 14 MR. SHAHID: And part of my proffer, Judge, would be
2 : 3 5 P M 15 that I could -- either I could list the names, but there's
2 : 3 5 P M 16 about nine witnesses who would -- I was going to call in
2 : 3 5 P M 17 furtherance of my question regarding the checkpoint and
2 : 3 5 P M 18 information along those lines.

2 : 3 5 P M 19 THE COURT: What would they -- how about telling me
2 : 3 5 P M 20 what does that mean? Someone said they heard the checkpoint
2 : 3 5 P M 21 was illegal, or what is that?

2 : 3 5 P M 22 MR. SHAHID: Well, some of them -- anticipate saying
2 : 3 5 P M 23 that they did not see the sign about the checkpoint ahead, and
2 : 3 5 P M 24 I was going to examine some of the law enforcement officers,
2 : 3 5 P M 25 particularly the Captain Stivender who was initially identified

2 : 3 5 P M 1 as the person who gave the authorization, and the criminal
2 : 3 6 P M 2 information officer, Miss Long, concerning how she came up with
2 : 3 6 P M 3 the name that she was the person who gave the oral
2 : 3 6 P M 4 authorization as well.

2 : 3 6 P M 5 THE COURT: Okay. I think that that's probably --
2 : 3 6 P M 6 based on my ruling, I think all of that is irrelevant; is that
2 : 3 6 P M 7 right? And none of those people testified at the suppression
2 : 3 6 P M 8 hearing except for the one officer; is that right?

2 : 3 6 P M 9 MR. SHAHID: The -- that's correct except Officer
2 : 3 6 P M 10 Sweat testified, but Captain Stivender didn't, Miss Long
2 : 3 6 P M 11 didn't, and then the other witness -- some of them I've been
2 : 3 6 P M 12 able to locate. Some of them I have not been able to locate.

2 : 3 6 P M 13 THE COURT: Okay. All right. We'll go from there
2 : 3 6 P M 14 then, okay? So what we'll do this afternoon is we'll finish up
2 : 3 6 P M 15 the Government's case. The Government can rest. Then we'll
2 : 3 6 P M 16 start you first thing in the morning, Mr. Shahid. If you're
2 : 3 6 P M 17 going to call witnesses, let us know. If you're not going to
2 : 3 6 P M 18 call any witnesses, let us know too, because we've got to give
2 : 3 6 P M 19 you the charge and get it all typed up, and I'll need to find
2 : 3 6 P M 20 out when the jury comes in.

2 : 3 7 P M 21 Now, is this a good time -- I guess this is as
2 : 3 7 P M 22 good a time as any to ask Mr. Fishburne -- have you and
2 : 3 7 P M 23 Mr. Fishburne talked about whether he wants to testify or not?

2 : 3 7 P M 24 MR. SHAHID: We have discussed that, yes.

2 : 3 7 P M 25 THE COURT: Okay. Have you made a decision? You

2 : 3 7 P M 1 don't have to do it now. You can do it in the morning. I
2 : 3 7 P M 2 don't care. I'm just --

2 : 3 7 P M 3 MR. SHAHID: Can I just explain to him what we're
2 : 3 7 P M 4 talking about, Judge?

2 : 3 7 P M 5 THE COURT: Okay. Mr. Fishburne, do you understand
2 : 3 7 P M 6 you have a right testify if you want to?

2 : 3 7 P M 7 THE DEFENDANT: Yes, sir.

2 : 3 7 P M 8 THE COURT: You understand you have a constitutional
2 : 3 7 P M 9 right not to testify if you don't want to?

2 : 3 7 P M 10 THE DEFENDANT: Yes, sir.

2 : 3 7 P M 11 THE COURT: And you understand that if you chose not
2 : 3 7 P M 12 to testify, the jury could not think that you were guilty based
2 : 3 7 P M 13 on the fact that you had exercised your constitutional right
2 : 3 7 P M 14 not to testify?

2 : 3 7 P M 15 THE DEFENDANT: Yes, sir.

2 : 3 7 P M 16 THE COURT: And as a matter of fact, this morning in
2 : 3 7 P M 17 my opening charge, I told the jury that you have no -- you're
2 : 3 7 P M 18 not -- you don't have the burden of proving any of this, that
2 : 3 7 P M 19 you are presumed to be innocent, and the Government is required
2 : 3 7 P M 20 to prove you guilty by competent evidence beyond a reasonable
2 : 3 8 P M 21 doubt before a jury could find you guilty. Do you remember me
2 : 3 8 P M 22 talking about that this morning?

2 : 3 8 P M 23 THE DEFENDANT: Yes, sir.

2 : 3 8 P M 24 THE COURT: So sooner or later, you have to make a
2 : 3 8 P M 25 decision on the record whether you want to testify and -- or

2 : 3 8 P M 1 whether you don't want to testify after you talk to your
2 : 3 8 P M 2 lawyer. So you don't have to do that right now. We can do
2 : 3 8 P M 3 that later on this afternoon or in the morning, so you think
2 : 3 8 P M 4 about that, because we're going to need to have that issue
2 : 3 8 P M 5 resolved, okay?

2 : 3 8 P M 6 THE DEFENDANT: Yes.

2 : 3 8 P M 7 THE COURT: Okay. Good. Thank you.

2 : 3 8 P M 8 MS. HENDERSON: In anticipation of preparing for
2 : 3 8 P M 9 closing, will we have the charge emailed to us tonight so we
2 : 3 8 P M 10 can incorporate --

2 : 3 8 P M 11 THE COURT: Yes.

2 : 3 8 P M 12 MS. HENDERSON: Thank you.

2 : 3 8 P M 13 THE COURT: You'll have charge with pages and lines
2 : 3 8 P M 14 so you can tell -- so either side can say, "Judge Norton, on
2 : 3 8 P M 15 page 16, line 21 is going to tell you this, and that's why it's
2 : 3 8 P M 16 important."

2 : 3 8 P M 17 MS. HENDERSON: Thank you, Your Honor.

2 : 3 8 P M 18 THE COURT: And we looked at -- and the verdict form,
2 : 3 8 P M 19 I would think Count 1, guilty, not guilty; Count 2 guilty, not
2 : 3 8 P M 20 guilty; Count 4, whatever, the three counts. Just a simple
2 : 3 8 P M 21 verdict form. Do you agree with that, Mr. Shahid?

2 : 3 9 P M 22 MR. SHAHID: (Nodding head affirmatively.)

2 : 3 9 P M 23 THE COURT: Okay. Good.

2 : 3 9 P M 24 MR. SCHOEN: Yes, Your Honor.

2 : 3 9 P M 25 THE COURT: All righty. Anything else?

2 : 3 9 P M 1 MR. SCHOEN: No, Judge.

2 : 3 9 P M 2 THE COURT: All right. Bring them.

3 (Jury in at 2:39 p.m.)

2 : 4 0 P M 4 THE COURT: Hope everybody had a good lunch. We'll
2 : 4 0 P M 5 continue with the testimony in this case. Mr. Schoen, you want
2 : 4 0 P M 6 to call your next witness?

2 : 4 0 P M 7 MR. SCHOEN: Yes, Your Honor. The Government calls
2 : 4 0 P M 8 Special Agent Bobby Callahan.

2 : 4 1 P M 9 COURTROOM DEPUTY: Please place your left hand on the
2 : 4 1 P M 10 Bible and raise your right hand and be sworn.

2 : 4 1 P M 11 (Witness sworn.)

2 : 4 1 P M 12 COURTROOM DEPUTY: Thank you.

2 : 4 1 P M 13 BOBBY CALLAHAN,
2 : 4 1 P M 14 a witness called on behalf of the Government, being first duly
2 : 4 1 P M 15 sworn, was examined and testified as follows:

2 : 4 1 P M 16 DIRECT EXAMINATION

2 : 4 1 P M 17 BY MR. SCHOEN:

2 : 4 1 P M 18 Q. Good afternoon, Special Agent Callahan.

2 : 4 1 P M 19 A. Good afternoon.

2 : 4 1 P M 20 Q. Could you please tell the jury where you work?

2 : 4 1 P M 21 A. I am employed with the Bureau of Alcohol, Tobacco,
2 : 4 1 P M 22 Firearms, and Explosives, otherwise known as ATF.

2 : 4 1 P M 23 Q. How long have you been with ATF?

2 : 4 1 P M 24 A. For 11 years.

2 : 4 1 P M 25 Q. And what is your position with ATF?

CALLAHAN - DIRECT EXAMINATION

2 : 4 1 P M 1 A. I am a Special Agent.

2 : 4 1 P M 2 Q. And prior to joining ATF, tell us a little bit about your
2 : 4 1 P M 3 background.

2 : 4 1 P M 4 A. So in 2007, I graduated from the University of South
2 : 4 1 P M 5 Carolina with a criminal justice degree. After that, I
2 : 4 1 P M 6 immediately applied for a position with ATF, and while going
2 : 4 1 P M 7 through the hiring process for approximately a year and a half,
2 : 4 2 P M 8 I began working as a contractor at the Passport Center here in
2 : 4 2 P M 9 Charleston.

2 : 4 2 P M 10 Q. You've spent essentially your entire career with ATF?

2 : 4 2 P M 11 A. Correct.

2 : 4 2 P M 12 Q. Can you tell us about what type of specialized training
2 : 4 2 P M 13 you receive as an ATF agent?

2 : 4 2 P M 14 A. Sure. So at the Academy, which is the Federal Law
2 : 4 2 P M 15 Enforcement Training Center, which is in Georgia, we go through
2 : 4 2 P M 16 a basic criminal investigator training program that teaches you
2 : 4 2 P M 17 the basics of running criminal investigations, conducting
2 : 4 2 P M 18 surveillances, interview techniques and those types of things,
2 : 4 2 P M 19 and then after that, we go to the ATF add-on portion, which is
2 : 4 2 P M 20 special agent basic training where we then learn about the
2 : 4 2 P M 21 various laws that we'll be enforcing as ATF agents.

2 : 4 2 P M 22 Q. And what's the totality of the length of that training?

2 : 4 2 P M 23 A. Total, it's about six months altogether.

2 : 4 2 P M 24 Q. And do you live at the facility for those six months?

2 : 4 2 P M 25 A. Yes. You are allowed to leave on some weekends, if you

CALLAHAN - DIRECT EXAMINATION

2 : 4 2 P M 1 choose to do so, but during the week, yes, you're there at the
2 : 4 3 P M 2 Academy.

2 : 4 3 P M 3 Q. And can you tell us about any specialized training you've
2 : 4 3 P M 4 received since you became a Special Agent?

2 : 4 3 P M 5 A. Sure. We train regularly. We attend various trainings
2 : 4 3 P M 6 each year. I've attended some firearms trafficking
2 : 4 3 P M 7 investigations, some asset forfeiture and money laundering
2 : 4 3 P M 8 trainings, and a lot of firearms-related courses.

2 : 4 3 P M 9 Q. Where do you -- where is your jurisdiction?

2 : 4 3 P M 10 A. So our office particularly, the ATF Charleston field
2 : 4 3 P M 11 office, we cover the majority of the coastal counties, all the
2 : 4 3 P M 12 way down south, Beaufort, Jasper, Hampton County, all the way
2 : 4 3 P M 13 along the coastline up to Georgetown County and inland to
2 : 4 3 P M 14 Clarendon.

2 : 4 3 P M 15 Q. Where do you do most of your work?

2 : 4 3 P M 16 A. I predominantly work in Colleton County.

2 : 4 3 P M 17 Q. I want to talk to you a little bit about the process that
2 : 4 3 P M 18 is required when a purchase -- a person purchases a firearm.
2 : 4 4 P M 19 What, if any, type of license do you need to be in the business
2 : 4 4 P M 20 of selling firearms?

2 : 4 4 P M 21 A. If you want to be in the business of selling firearms,
2 : 4 4 P M 22 you're required to obtain a federal firearms license from ATF,
2 : 4 4 P M 23 and that generally requires -- in a nutshell, you can't be
2 : 4 4 P M 24 prohibited from possessing firearms. You have to be able to
2 : 4 4 P M 25 pass a background check and have a premises to conduct the

CALLAHAN - DIRECT EXAMINATION

2 : 4 4 P M 1 business. There's a lot of paperwork that's required to be
2 : 4 4 P M 2 filled out. That's submitted to ATF. At that point they will
2 : 4 4 P M 3 review the paperwork, and an industry operations investigator
2 : 4 4 P M 4 will interview that individual and from that point make a
2 : 4 4 P M 5 recommendation on whether they should receive their license or
2 : 4 4 P M 6 not.

2 : 4 4 P M 7 Q. To be clear, that's not required for, you know, me to sell
2 : 4 4 P M 8 a firearm to one of my friends, right?

2 : 4 4 P M 9 A. No, that is just to be engaged in the business of dealing
2 : 4 4 P M 10 in firearms.

2 : 4 4 P M 11 Q. Okay. Now, if you are a federal firearms licensed -- if
2 : 4 4 P M 12 you receive one of these licenses, what requirements do you
2 : 4 5 P M 13 have to keep up with in order to maintain your license?

2 : 4 5 P M 14 A. So one of those requirements is to have all purchasers
2 : 4 5 P M 15 fill out the mandatory -- what's called an ATF form 4473 or
2 : 4 5 P M 16 firearms transaction record that's required to be done every
2 : 4 5 P M 17 time an individual wants to purchase a firearm.

2 : 4 5 P M 18 Q. What type of things are asked on a 4473 form?

2 : 4 5 P M 19 A. So it starts with general biographical information on the
2 : 4 5 P M 20 purchaser, such as their name, address, date of birth, place of
2 : 4 5 P M 21 birth, Social Security number, sex, that type of thing.

2 : 4 5 P M 22 And then it asks a series of yes or no questions
2 : 4 5 P M 23 where the individual has to certify, you know, whether they are
2 : 4 5 P M 24 prohibited or not from possessing firearms, and they also
2 : 4 5 P M 25 indicate that they are the actual purchaser of the firearm, and

CALLAHAN - DIRECT EXAMINATION

2 : 4 5 P M 1 after that, they sign the form indicating that their answers
2 : 4 5 P M 2 are true and correct.

2 : 4 5 P M 3 After that's done, the FFL will review their identity
2 : 4 6 P M 4 document to be certain that they are who they say they are, and
2 : 4 6 P M 5 then from there, the FFL will conduct a background check on the
2 : 4 6 P M 6 purchaser to see if they are able to possess the firearm. That
2 : 4 6 P M 7 process is conducted by the National Instant Criminal
2 : 4 6 P M 8 Background Check System, which is abbreviated as NICS, and once
2 : 4 6 P M 9 they get the purchaser's information, they can either return
2 : 4 6 P M 10 one of three responses, the first one being a proceed response,
2 : 4 6 P M 11 which means they can go through with the firearms transaction;
2 : 4 6 P M 12 a delayed response, which means the firearm cannot be
2 : 4 6 P M 13 transferred right now because they need to do additional
2 : 4 6 P M 14 research. However, there's a caveat to that, that if after
2 : 4 6 P M 15 three business days, the FFL has not received a response from
2 : 4 6 P M 16 the NICS branch, they could lawfully transfer the firearm. And
2 : 4 6 P M 17 the third response would be a denied response, indicating that
2 : 4 6 P M 18 they are not allowed to transfer the firearm.

2 : 4 6 P M 19 So once the background check is done, that
2 : 4 6 P M 20 information is recorded on the form, the results of it, and
2 : 4 6 P M 21 then the firearm information is listed on the form -- make,
2 : 4 6 P M 22 model, caliber, serial number and the type of firearm -- and
2 : 4 7 P M 23 then the employee will sign the form as well, and the
2 : 4 7 P M 24 transaction is complete.

2 : 4 7 P M 25 Q. who is responsible for maintaining a 4473 form?

CALLAHAN - DIRECT EXAMINATION

2 : 4 7 P M 1 A. The gun store is responsible for keeping those records
2 : 4 7 P M 2 unless they go out of business or they've had the records for
2 : 4 7 P M 3 more than 20 years, they can send those records to ATF.

2 : 4 7 P M 4 Q. Okay. And where -- if a gun store does go out of
2 : 4 7 P M 5 business, where are those forms kept?

2 : 4 7 P M 6 A. They're sent to the ATF out-of-business records.

2 : 4 7 P M 7 Q. Which is what?

2 : 4 7 P M 8 A. It's basically a building where they store all of these
2 : 4 7 P M 9 paper records, and they actually go through the process of
2 : 4 7 P M 10 making digital images of the records so that the original paper
2 : 4 7 P M 11 copies can be destroyed.

2 : 4 7 P M 12 Q. Now, I want to talk a little bit about how firearms can be
2 : 4 7 P M 13 traced. What, if anything, can be done to trace a firearm?

2 : 4 7 P M 14 A. So firearms tracing is the tracking of the movement of a
2 : 4 8 P M 15 firearm basically from when it was manufactured through the
2 : 4 8 P M 16 distribution chain to the first retail purchaser, and the way
2 : 4 8 P M 17 that law enforcement can trace these firearms is through a
2 : 4 8 P M 18 system called eTrace, which is an online computerized system
2 : 4 8 P M 19 where when law enforcement recovers a firearm, they can enter
2 : 4 8 P M 20 the descriptors of the firearm -- make, model, caliber, serial
2 : 4 8 P M 21 number -- into the eTrace system. That information is then
2 : 4 8 P M 22 sent to ATF's tracing center, where they can access the
2 : 4 8 P M 23 manufacturer's records and determine to which wholesaler the
2 : 4 8 P M 24 firearm went to, and then from there which actual retailer the
2 : 4 8 P M 25 firearm went to. At that point they'll reach out to the

CALLAHAN - DIRECT EXAMINATION

2 : 4 8 P M 1 retailer, or the FFL that I spoke about previously, and they'll
2 : 4 8 P M 2 request that they provide the purchaser information. So the
2 : 4 8 P M 3 FFL will then look through their ATF form 4473, either manually
2 : 4 8 P M 4 or in the computer, if they keep their records that way, and
2 : 4 8 P M 5 they will provide the purchaser's information to the tracing
2 : 4 9 P M 6 center, completing the trace.

2 : 4 9 P M 7 Q. There's been a lot of talk about guns being titled to
2 : 4 9 P M 8 particular people or registered to particular people. Are guns
2 : 4 9 P M 9 registered to particular individuals?

2 : 4 9 P M 10 A. No, there's no requirement, in the state of South Carolina
2 : 4 9 P M 11 anyway, that firearms be registered. In my experience, when
2 : 4 9 P M 12 somebody is talking about a gun being registered, they're
2 : 4 9 P M 13 usually referring to who the purchaser of that firearm was and
2 : 4 9 P M 14 who it was that actually filled out the paperwork to purchase
2 : 4 9 P M 15 the firearm.

2 : 4 9 P M 16 Q. So to be clear, so I understand it, what you can tell is
2 : 4 9 P M 17 who bought the gun from the FFL, not, you know, everything
2 : 4 9 P M 18 that's happened to the gun since that time?

2 : 4 9 P M 19 A. No. When a firearm is traced, it will only show you the
2 : 4 9 P M 20 first retail purchaser of that firearm. What happens to it
2 : 4 9 P M 21 after that is not indicated on that paperwork.

2 : 5 0 P M 22 Q. Are you familiar with the Defendant, Quentin John
2 : 5 0 P M 23 Fishburne?

2 : 5 0 P M 24 A. Yes.

2 : 5 0 P M 25 Q. And do you see the Defendant in the courtroom today?

CALLAHAN - DIRECT EXAMINATION

2 : 5 0 P M 1 A. I do.

2 : 5 0 P M 2 Q. Can you -- can you describe him, identify him using
2 : 5 0 P M 3 clothing or accessories?

2 : 5 0 P M 4 A. Sure. He's sitting over there behind you wearing a blue
2 : 5 0 P M 5 collared button-up shirt, white T-shirt underneath, gold-rimmed
2 : 5 0 P M 6 glasses.

2 : 5 0 P M 7 MR. SCHOEN: Let the record reflect that the witness
2 : 5 0 P M 8 has accurately identified Mr. Fishburne.

2 : 5 0 P M 9 BY MR. SCHOEN:

2 : 5 0 P M 10 Q. Are you familiar with a woman named Renata Shontel
2 : 5 0 P M 11 Ellison?

2 : 5 0 P M 12 A. Yes, I am.

2 : 5 0 P M 13 Q. Are you aware of what, if any, relationship exists between
2 : 5 0 P M 14 Mr. Fishburne and Ms. Ellison?

2 : 5 0 P M 15 A. I determined that they had been in a relationship since
2 : 5 0 P M 16 2013.

2 : 5 0 P M 17 Q. What type of relationship?

2 : 5 0 P M 18 A. I would determine it to be an intimate relationship.

2 : 5 0 P M 19 Q. And on March 31st of 2018, based on your investigation,
2 : 5 0 P M 20 were they still in an intimate relationship?

2 : 5 1 P M 21 A. I believe so, yes.

2 : 5 1 P M 22 Q. There's been a lot of discussion about some different
2 : 5 1 P M 23 vehicles in this case. As an ATF agent, do you have the
2 : 5 1 P M 24 ability to search records to determine who a vehicle is
2 : 5 1 P M 25 registered to?

CALLAHAN - DIRECT EXAMINATION

2 : 5 1 P M 1 A. Yes, we do have access to the South Carolina Department of
2 : 5 1 P M 2 Motor Vehicles and other state databases to do that.

2 : 5 1 P M 3 Q. Are those records public records?

2 : 5 1 P M 4 A. They are.

2 : 5 1 P M 5 Q. Is the database that you're using publicly available?

2 : 5 1 P M 6 A. No. At least for us, we're required to have user names
2 : 5 1 P M 7 and accounts to access that information.

2 : 5 1 P M 8 Q. Okay. Did you -- were you able to determine who -- who
2 : 5 1 P M 9 the registered owner of a Lincoln sedan bearing -- bearing
2 : 5 1 P M 10 registration FLU998 was?

2 : 5 1 P M 11 A. Yes, the listed owner was Kenyetta Fishburne.

2 : 5 1 P M 12 Q. And who based on your investigation is Kenyetta Fishburne?

2 : 5 2 P M 13 A. That would be Mr. Fishburne's spouse.

2 : 5 2 P M 14 Q. Were you able to determine who the registered owner of a
2 : 5 2 P M 15 Camaro bearing registration PFM377 was?

2 : 5 2 P M 16 A. Yes, the listed owner was a Kathy Pinckney.

2 : 5 2 P M 17 Q. And based on your investigation, who is Kathy Pinckney?

2 : 5 2 P M 18 A. That would be Mr. Fishburne's mother.

2 : 5 2 P M 19 Q. Were you able to determine whether any vehicles were
2 : 5 2 P M 20 registered to Mr. Fishburne?

2 : 5 2 P M 21 A. The last time that I had checked the South Carolina
2 : 5 2 P M 22 Department of Motor Vehicles' database, I did not see any
2 : 5 2 P M 23 vehicles registered to Mr. Fishburne.

2 : 5 2 P M 24 Q. I want to talk a little bit about the various firearms in
2 : 5 2 P M 25 this case. Are you familiar with a Jimenez firearm that was

CALLAHAN - DIRECT EXAMINATION

2 : 5 2 P M 1 recovered from Mr. Fishburne on May 2nd, 2014?

2 : 5 2 P M 2 A. Yes, I am.

2 : 5 3 P M 3 MR. SHAHID: Your Honor, object to the way the
2 : 5 3 P M 4 question was formed.

2 : 5 3 P M 5 MR. SCHOEN: I'm happy to rephrase.

2 : 5 3 P M 6 THE COURT: Okay. Go ahead.

2 : 5 3 P M 7 BY MR. SCHOEN:

2 : 5 3 P M 8 Q. Are you familiar with a Jimenez firearm that was recovered
2 : 5 3 P M 9 out of a vehicle that Quentin Fishburne was driving on May 2nd,
2 : 5 3 P M 10 2014?

2 : 5 3 P M 11 A. Yes, I am.

2 : 5 3 P M 12 Q. And when was that firearm purchased?

2 : 5 3 P M 13 A. March 8th of 2013.

2 : 5 3 P M 14 MR. SCHOEN: Your Honor, at this time I'd request
2 : 5 3 P M 15 permission to approach and ask -- retrieve evidence and present
2 : 5 3 P M 16 it to the agent?

2 : 5 3 P M 17 THE COURT: Sure.

2 : 5 3 P M 18 MR. SCHOEN: I'm approaching the witness with what's
2 : 5 3 P M 19 previously been marked as Government's Exhibit 9. This has
2 : 5 3 P M 20 already been admitted into evidence, but it hasn't been
2 : 5 3 P M 21 published.

2 : 5 3 P M 22 THE COURT: Okay.

2 : 5 3 P M 23 MR. SCHOEN: while I'm up here, I'd also like to hand
2 : 5 3 P M 24 Special Agent Callahan Government's Exhibit 3, which has also
2 : 5 4 P M 25 been admitted into evidence, and ask him some questions about

CALLAHAN - DIRECT EXAMINATION

2 : 5 4 P M 1 these two exhibits.

2 : 5 4 P M 2 THE COURT: Sure.

2 : 5 4 P M 3 BY MR. SCHOEN:

2 : 5 4 P M 4 Q. Special Agent Callahan, can you tell us what Government's
2 : 5 4 P M 5 Exhibit 9 is?

2 : 5 4 P M 6 A. So Government's Exhibit 9 is the ATF form 4473 that I was
2 : 5 4 P M 7 describing earlier, and this was a form that was filled out by
2 : 5 4 P M 8 Renata Ellison, and this transaction occurred on March 8th,
2 : 5 4 P M 9 2013 from the Silver Dollar Pawn Shop in Walterboro, and this
2 : 5 4 P M 10 purchase was of a Jimenez model JA Nine 9 millimeter pistol
2 : 5 4 P M 11 with serial number 239429.

2 : 5 4 P M 12 Q. Are you aware of what happened to this gun?

2 : 5 4 P M 13 A. I am.

2 : 5 4 P M 14 Q. What -- where was this gun recovered?

2 : 5 4 P M 15 A. This gun was recovered by the Colleton County Sheriff's
2 : 5 4 P M 16 office on May 2nd, 2014.

2 : 5 4 P M 17 Q. And what happened to it after -- based on your
2 : 5 5 P M 18 investigation, what happened to it after it was recovered by
2 : 5 5 P M 19 the Colleton County Sheriff's Department?

2 : 5 5 P M 20 A. Ultimately on December 23rd of 2014, that Jimenez firearm
2 : 5 5 P M 21 was returned to Renata Ellison.

2 : 5 5 P M 22 Q. Can you look at Exhibit 3? Are you familiar with Exhibit
2 : 5 5 P M 23 3?

2 : 5 5 P M 24 A. Yes, I am.

2 : 5 5 P M 25 Q. And what is Exhibit 3?

CALLAHAN - DIRECT EXAMINATION

2 : 5 5 P M 1 A. Exhibit 3 is -- it looks like a receipt of some type from
2 : 5 5 P M 2 the Colleton County Sheriff's Office indicating that on
2 : 5 5 P M 3 December 23rd, 2014, Renata Ellison retrieved the Jimenez Arms
2 : 5 5 P M 4 9 millimeter pistol from the Sheriff's Office.

2 : 5 5 P M 5 Q. Can you compare the serial number for the Jimenez Arms
2 : 5 5 P M 6 that's referenced in the 4473 that she filled out with the
2 : 5 6 P M 7 serial number on that property receipt returning the property
2 : 5 6 P M 8 to her?

2 : 5 6 P M 9 A. Serial number is the same.

2 : 5 6 P M 10 Q. The serial numbers match?

2 : 5 6 P M 11 A. Yes.

2 : 5 6 P M 12 MR. SCHOEN: Permission to approach and retrieve
2 : 5 6 P M 13 evidence?

2 : 5 6 P M 14 THE COURT: Sure.

2 : 5 6 P M 15 MR. SCHOEN: Permission to approach the witness with
2 : 5 6 P M 16 Government's Exhibit 10 and Government's Exhibit 6?

2 : 5 6 P M 17 THE COURT: Sure.

2 : 5 6 P M 18 BY MR. SCHOEN:

2 : 5 6 P M 19 Q. Special Agent Callahan, what is Government's Exhibit 10?

2 : 5 6 P M 20 A. Government's Exhibit 10 is another ATF form 4473 completed
2 : 5 6 P M 21 by Renata Ellison. This transaction occurred on September 5th,
2 : 5 7 P M 22 2014, and this was at CMH Consulting LLC in Walterboro for a
2 : 5 7 P M 23 Smith & Wesson model M&P Shield .40 caliber pistol with serial
2 : 5 7 P M 24 number HSR7417.

2 : 5 7 P M 25 Q. Can you look at the -- or tell us what Government's

CALLAHAN - DIRECT EXAMINATION

2 : 5 7 P M 1 Exhibit 6 is?

2 : 5 7 P M 2 A. Government's Exhibit 6 is a Smith & Wesson M&P Shield .40
2 : 5 7 P M 3 caliber pistol bearing the serial number HSR7417 with a
2 : 5 7 P M 4 magazine.

2 : 5 7 P M 5 Q. Does that gun -- does the serial number on that gun match
2 : 5 7 P M 6 the serial number on that form?

2 : 5 7 P M 7 A. Yes, they're the same.

2 : 5 7 P M 8 Q. I want you to hold onto the gun for a few minutes. I'm
2 : 5 8 P M 9 going to ask you a couple of questions about the gun. Can you
2 : 5 8 P M 10 tell us what -- what caliber is that gun?

2 : 5 8 P M 11 A. It's a .40 caliber.

2 : 5 8 P M 12 Q. And as a part of your experience with ATF, do you deal
2 : 5 8 P M 13 with a lot of firearms?

2 : 5 8 P M 14 A. Correct.

2 : 5 8 P M 15 Q. As part of your experience with ATF, are you trained in
2 : 5 8 P M 16 using firearms?

2 : 5 8 P M 17 A. Yes.

2 : 5 8 P M 18 Q. Do you do a lot of shooting?

2 : 5 8 P M 19 A. Yes.

2 : 5 8 P M 20 Q. Can you tell us, a .40 caliber, among the various calibers
2 : 5 8 P M 21 that one can fire out of a handgun, common handgun caliber,
2 : 5 8 P M 22 where does that fall on the spectrum? Small or large or where
2 : 5 8 P M 23 is it?

2 : 5 8 P M 24 A. As far as semiautomatic pistols go, .40 caliber, you're
2 : 5 8 P M 25 trending towards the upper end of the larger calibers as far as

CALLAHAN - DIRECT EXAMINATION

2 : 5 8 P M 1 semiautomatic pistol.

2 : 5 8 P M 2 Q. what kind of caliber handgun are you issued as part of
2 : 5 8 P M 3 ATF?

2 : 5 8 P M 4 A. we're issued 9 millimeters.

2 : 5 8 P M 5 Q. Is that gun larger or smaller than 9 millimeter?

2 : 5 8 P M 6 A. .40 caliber is larger than a 9 millimeter.

2 : 5 8 P M 7 Q. what affects the recoil --

2 : 5 8 P M 8 MR. SHAHID: Objection, Your Honor. It's totally
2 : 5 9 P M 9 irrelevant to the issue at hand here.

2 : 5 9 P M 10 THE COURT: The first part is -- what do you mean,
2 : 5 9 P M 11 "what affects the recoil?" Get your question out, and then
2 : 5 9 P M 12 I'll rule on it.

2 : 5 9 P M 13 MR. SCHOEN: Yes, Your Honor.

2 : 5 9 P M 14 BY MR. SCHOEN:

2 : 5 9 P M 15 Q. what are the various factors in terms of -- what various
2 : 5 9 P M 16 factors affect how much recoil the gun will have?

2 : 5 9 P M 17 A. Recoil in a firearm is generally determined by a couple of
2 : 5 9 P M 18 different things. The mass of the firearm. Generally a
2 : 5 9 P M 19 heavier or larger firearm will have less-felt recoil. The size
2 : 5 9 P M 20 of the bullet. Generally a larger bullet will generate more
2 : 5 9 P M 21 recoil, and the speed of the bullet as well. Generally a
2 : 5 9 P M 22 faster bullet will have more felt recoil.

2 : 5 9 P M 23 Q. So as handguns go, is that a large or a small frame
2 : 5 9 P M 24 handgun?

2 : 5 9 P M 25 A. That is small framed.

CALLAHAN - DIRECT EXAMINATION

2 : 5 9 P M 1 Q. So it has a higher caliber and a smaller frame. How would
2 : 5 9 P M 2 you expect the recoil on that gun to be?

2 : 5 9 P M 3 A. It would have a decent amount of recoil.

3 : 0 0 P M 4 Q. Special Agent Callahan, are you familiar with a shooting
3 : 0 0 P M 5 that occurred on November 6th, 2015?

3 : 0 0 P M 6 A. Yes, I am.

3 : 0 0 P M 7 MR. SCHOEN: Your Honor, at this point I would
3 : 0 0 P M 8 request permission to approach and to publish to the jury the
3 : 0 0 P M 9 stipulation that the Government and the defense have reached,
3 : 0 0 P M 10 Government stipulation -- or Government's Exhibit 14.

3 : 0 0 P M 11 THE COURT: Sure.

3 : 0 0 P M 12 MR. SCHOEN: Ladies and gentlemen, I'm going to read
3 : 0 0 P M 13 you a stipulation that the Government and the defense have
3 : 0 0 P M 14 reached. This is Government's Exhibit 14.

3 : 0 0 P M 15 There was a shooting in Colleton County on
3 : 0 0 P M 16 November 6th, 2015 involving members or associates of a
3 : 0 0 P M 17 criminal street gang named the Cowboys in which at least three
3 : 0 0 P M 18 different firearms were used. .380, .40 caliber and
3 : 0 0 P M 19 .45 caliber shell casings were recovered from the scene. The
3 : 0 1 P M 20 three .40 caliber shell casings recovered are Exhibits 11, 12,
3 : 0 1 P M 21 and 13 in this case.

3 : 0 1 P M 22 Quentin Fishburne was convicted of a crime in
3 : 0 1 P M 23 connection with the shooting. He admitted that he was an
3 : 0 1 P M 24 associate of the Cowboys, that he was present at the scene, and
3 : 0 1 P M 25 that he drove another associate of the Cowboys away from the

CALLAHAN - DIRECT EXAMINATION

3 : 0 1 P M 1 scene of the shooting.

3 : 0 1 P M 2 Authorities were not able to determine whether
3 : 0 1 P M 3 or not Mr. Fishburne fired any of the shots on November 6th,
3 : 0 1 P M 4 2015.

3 : 0 1 P M 5 Stipulation is signed by the Defendant and his
3 : 0 1 P M 6 attorney and the attorney for the Government.

3 : 0 1 P M 7 BY MR. SCHOEN:

3 : 0 2 P M 8 Q. Special Agent Callahan, do you have the shell casings that
3 : 0 2 P M 9 are 11, 12 and 13?

3 : 0 2 P M 10 THE WITNESS: Do I have permission to step down and
3 : 0 2 P M 11 get those for the --

3 : 0 2 P M 12 THE COURT: Sure.

3 : 0 2 P M 13 MR. SCHOEN: Thank you.

3 : 0 2 P M 14 (Pause.)

3 : 0 2 P M 15 MR. SCHOEN: Permission to approach the witness with
3 : 0 2 P M 16 Government's Exhibits 11, 12 and 13?

3 : 0 2 P M 17 THE COURT: Sure.

3 : 0 2 P M 18 BY MR. SCHOEN:

3 : 0 3 P M 19 Q. Special Agent Callahan, can you identify what I've just
3 : 0 3 P M 20 handed you?

3 : 0 3 P M 21 A. Yes. These are three .40 caliber spent shell casings that
3 : 0 3 P M 22 were recovered from a shooting that occurred on November 6th,
3 : 0 3 P M 23 2015 that was investigated and recovered by the Colleton County
3 : 0 3 P M 24 Sheriff's Office.

3 : 0 3 P M 25 MR. SCHOEN: Your Honor, at this point the Government

CALLAHAN - DIRECT EXAMINATION

3 : 0 3 P M 1 would move Exhibits 11, 12 and 13 into evidence.

3 : 0 3 P M 2 THE COURT: Without objection?

3 : 0 3 P M 3 MR. SHAHID: Without objection.

3 : 0 3 P M 4 THE COURT: Okay. In evidence.

3 : 0 3 P M 5 BY MR. SCHOEN:

3 : 0 3 P M 6 Q. What is NIBIN?

3 : 0 3 P M 7 A. So NIBIN is an acronym for the National Integrated
3 : 0 3 P M 8 Ballistic Information Network, and what that is is like
3 : 0 4 P M 9 fingerprints but for guns. So basically what we can do with
3 : 0 4 P M 10 that is when law enforcement either recovers shell casings from
3 : 0 4 P M 11 a crime scene or if they retrieve a gun in evidence, they can
3 : 0 4 P M 12 test fire that gun, and they can take that test fired shell
3 : 0 4 P M 13 casing or the shell casings that they recovered from a scene,
3 : 0 4 P M 14 and they can have those shell casings entered into the NIBIN
3 : 0 4 P M 15 database, and what that does is it takes basically pictures of
3 : 0 4 P M 16 the shell casing, specifically of the firing pin and the
3 : 0 4 P M 17 extractor, because those leave unique marks on the shell
3 : 0 4 P M 18 casing, and they're identifiable to a particular firearm, much
3 : 0 4 P M 19 like fingerprints are, and those images are uploaded into the
3 : 0 4 P M 20 database and can be compared with all other shell casings that
3 : 0 4 P M 21 have been put into the system and can generate leads for law
3 : 0 4 P M 22 enforcement indicating that certain shell casings match other
3 : 0 4 P M 23 shell casings that were recovered at a different time.

3 : 0 4 P M 24 Q. Can you tell us whether you requested any NIBIN
3 : 0 5 P M 25 examination with regard to these shell casings?

CALLAHAN - DIRECT EXAMINATION

3 : 0 5 P M 1 A. I did. The -- I recalled that when Mr. Fishburne was
3 : 0 5 P M 2 found in possession of the Smith & Wesson .40 caliber pistol,
3 : 0 5 P M 3 recalled that in reference to the 2015 shooting that was just
3 : 0 5 P M 4 read to you, there were .40 caliber shell casings recovered
3 : 0 5 P M 5 from that scene. So I requested that the shell casings from
3 : 0 5 P M 6 the 2015 shooting were entered into the database to see if they
3 : 0 5 P M 7 matched particularly with the test fired cartridge from the
3 : 0 5 P M 8 .40 caliber pistol recovered during the March 31st, 2018
3 : 0 5 P M 9 traffic stop.

3 : 0 5 P M 10 Q. Did you request that the pistol be test fired?

3 : 0 5 P M 11 A. Yes.

3 : 0 5 P M 12 Q. I want to talk -- turn a little bit. You talked -- you
3 : 0 5 P M 13 mentioned fingerprints. There's been a lot of talk about
3 : 0 5 P M 14 fingerprints as well. Why didn't you fingerprint the Jimenez
3 : 0 6 P M 15 Arms gun?

3 : 0 6 P M 16 A. Well, for the Jimenez, my investigation into this matter
3 : 0 6 P M 17 didn't -- didn't start back in 2014. That case had been
3 : 0 6 P M 18 resolved by the time I began looking into it.

3 : 0 6 P M 19 Q. And so where was the gun by the time you were looking into
3 : 0 6 P M 20 the case?

3 : 0 6 P M 21 A. That firearm had been returned to Ms. Ellison.

3 : 0 6 P M 22 Q. Have you ever been able to recover that gun?

3 : 0 6 P M 23 A. I have not been able to, no.

3 : 0 6 P M 24 Q. Why didn't you have the Smith & Wesson M&P Shield
3 : 0 6 P M 25 fingerprinted?

CALLAHAN - DIRECT EXAMINATION

3 : 0 6 P M 1 A. So with the M&P Shield, I reached out to the walterboro
3 : 0 6 P M 2 Police Department and had requested that it be sent for
3 : 0 6 P M 3 fingerprints. However, I was informed it had not been
3 : 0 6 P M 4 preserved for fingerprints and that it had already been sent
3 : 0 6 P M 5 for NIBIN analysis and test fired and handled, so it was not
3 : 0 6 P M 6 sent for any latent recovery.

3 : 0 6 P M 7 Q. Have you ever requested fingerprints -- that guns be
3 : 0 7 P M 8 fingerprinted in any of your cases?

3 : 0 7 P M 9 A. I have.

3 : 0 7 P M 10 Q. How many times?

3 : 0 7 P M 11 A. Dozens.

3 : 0 7 P M 12 Q. Have you ever gotten a fingerprint off of a gun?

3 : 0 7 P M 13 A. Not that I can think of offhand.

3 : 0 7 P M 14 Q. After you took those cases to Charleston County -- those
3 : 0 7 P M 15 casings to Charleston County, what, if anything, else did you
3 : 0 7 P M 16 do with them?

3 : 0 7 P M 17 A. Once I took them to Charleston County, I was informed by
3 : 0 7 P M 18 them that there was a presumptive lead --

3 : 0 7 P M 19 MR. SHAHID: Objection to what someone is telling him
3 : 0 7 P M 20 from Charleston County, Your Honor.

3 : 0 7 P M 21 MR. SCHOEN: Your Honor goes to his subsequent
3 : 0 7 P M 22 action. He's going to testify that he took it to SLED.

3 : 0 7 P M 23 THE COURT: How about, "As a result of what you heard
3 : 0 7 P M 24 from Charleston County" --

25

CALLAHAN - DIRECT EXAMINATION

3 : 0 7 P M 1 BY MR. SCHOEN:

3 : 0 7 P M 2 Q. As a result of what you heard from Charleston County, what
3 : 0 7 P M 3 did you do with it?

3 : 0 7 P M 4 A. I took the firearm and the shell casings to SLED for
3 : 0 7 P M 5 further analysis.

3 : 0 8 P M 6 Q. Were you present at a bond hearing for Quentin Fishburne
3 : 0 8 P M 7 in connection with the alleged possession of the M&P Shield on
3 : 0 8 P M 8 March 31st, 2018?

3 : 0 8 P M 9 A. Yes, I was.

3 : 0 8 P M 10 MR. SCHOEN: Your Honor, at this time I would request
3 : 0 8 P M 11 permission to publish Court's Exhibit 1.

3 : 0 8 P M 12 THE COURT: Okay.

3 : 0 8 P M 13 MR. SCHOEN: Actually let me ask the agent about this
3 : 0 8 P M 14 real quick. Permission to approach the agent --

3 : 0 8 P M 15 THE COURT: Sure.

3 : 0 8 P M 16 MR. SCHOEN: -- with Court's Exhibit 1?

3 : 0 8 P M 17 BY MR. SCHOEN:

3 : 0 8 P M 18 Q. Do you recognize the contents of what I just handed you?

3 : 0 8 P M 19 A. Yes, I do.

3 : 0 8 P M 20 Q. How do you recognize it?

3 : 0 8 P M 21 A. I have seen this letter before, and it was -- at least
3 : 0 8 P M 22 part of it was summarized at that bond hearing that you
3 : 0 8 P M 23 referenced.

3 : 0 8 P M 24 MR. SCHOEN: Permission to approach, retrieve, and
3 : 0 8 P M 25 publish to the jury?

CALLAHAN - DIRECT EXAMINATION

3 : 0 9 P M 1 THE COURT: Sure.

3 : 0 9 P M 2 MR. SCHOEN: This is Court's Exhibit 1.

3 : 0 9 P M 3 "On Saturday, March 31st, 2018, Quentin
3 : 0 9 P M 4 Fishburne and I, Renata Ellison, were riding
3 : 0 9 P M 5 together just prior to his arrest. Quentin
3 : 0 9 P M 6 picked me up from 103 Mincey Street. Quentin
3 : 0 9 P M 7 exited the car and walked around to the
3 : 0 9 P M 8 passenger's side. I proceeded to the driver's
3 : 0 9 P M 9 side of the Camaro. Once in the car, I placed
3 : 0 9 P M 10 my firearm under the driver's seat. Hence we
3 : 0 9 P M 11 were supposed to have lunch at Golden Corral.
3 : 0 9 P M 12 However, he received a call from another
3 : 0 9 P M 13 female. This prompted an argument between he
3 : 0 9 P M 14 and I. As a result, I drove back to Mincey
3 : 0 9 P M 15 Street. Still upset about the phone call, I
3 : 0 9 P M 16 got out the -- and Quentin left. Subsequently
3 : 0 9 P M 17 I left my firearm under the driver's seat.
3 : 0 9 P M 18 Quentin was unaware that my firearm was in the
3 : 0 9 P M 19 car. As follows, I contacted Officer Duboise
3 : 1 0 P M 20 the next day to retrieve my firearm but was
3 : 1 0 P M 21 unsuccessful. I explained to Officer Duboise
3 : 1 0 P M 22 that Quentin was unaware that the firearm was
3 : 1 0 P M 23 in the car. Officer Duboise said Quentin would
3 : 1 0 P M 24 have to plead guilty before my firearm could be
3 : 1 0 P M 25 released." Signed, Renata Ellison.

CALLAHAN - DIRECT EXAMINATION

1 It is notarized, and the date of the notary --
2 the date that the notary's certification expires is
3 February 9th, 2028.

4 BY MR. SCHOEN:

5 Q. Special Agent Callahan, what, if anything, did you do to
6 investigate the claims made in that letter?

7 A. The first thing I did was check and see if Ms. Ellison had
8 purchased any additional firearms, and if she had, what the
9 disposition of those firearms was. I wanted to interview her
10 and also conduct the NIBIN activity.

11 Q. All right. Let's start with the first part of that.
12 what -- how many firearms were you able to determine that
13 Ms. Ellison had purchased?

14 A. I was able to find three different firearms.

15 Q. And what were those firearms?

16 A. They were a Bersa Ultra Compact 9 millimeter, a Jimenez JA
17 Nine 9 millimeter, and the Smith & Wesson M&P Shield
18 .40 caliber.

19 Q. So prior to the gun that Mr. Fishburne was -- found most
20 recently in the vehicle he was driving, there were two other
21 guns that she had purchased?

22 A. Correct.

23 Q. Now, you mentioned the Jimenez. Is that the same Jimenez
24 that we've been talking about that was found in the vehicle he
25 was driving on May 2nd, 2014?

CALLAHAN - DIRECT EXAMINATION

3 : 1 1 P M 1 A. Yes, it is.

3 : 1 1 P M 2 Q. Okay. Tell me about the Bersa.

3 : 1 1 P M 3 A. The Bersa was purchased in December of 2007, and in
3 : 1 1 P M 4 researching that firearm purchase, I was able to also find out
3 : 1 1 P M 5 from the Walterboro Police Department that that firearm was
3 : 1 1 P M 6 recovered by them on November 21st of 2012 during a foot
3 : 1 2 P M 7 pursuit with an individual. That firearm had been discarded,
3 : 1 2 P M 8 and they found it in some bushes.

3 : 1 2 P M 9 Q. Okay. So the Walterboro police were chasing somebody, and
3 : 1 2 P M 10 they found the firearm?

3 : 1 2 P M 11 A. Correct.

3 : 1 2 P M 12 Q. Were they able to determine who it was that they were
3 : 1 2 P M 13 chasing?

3 : 1 2 P M 14 A. They did not know for certain who it was that they were
3 : 1 2 P M 15 chasing after.

3 : 1 2 P M 16 Q. Did they have any description of the person?

3 : 1 2 P M 17 A. When I spoke with them, my understanding is that they
3 : 1 2 P M 18 thought it was a black male.

3 : 1 2 P M 19 MR. SHAHID: This is hearsay. He's saying what he
3 : 1 2 P M 20 talked to somebody about this --

3 : 1 2 P M 21 THE COURT: You said did they have a description?
3 : 1 2 P M 22 That seemed to be hearsay. That's an out-of-court statement.

3 : 1 2 P M 23 MR. SCHOEN: Yes, Your Honor, but my understanding
3 : 1 2 P M 24 regarding our previous stipulation -- can we have a sidebar?

3 : 1 2 P M 25 MR. SHAHID: That's fine.

CALLAHAN - DIRECT EXAMINATION

3 : 1 2 P M 1 THE COURT: Okay.

3 : 1 2 P M 2 MR. SHAHID: That's fine.

3 : 1 2 P M 3 THE COURT: Thank you.

3 : 1 2 P M 4 BY MR. SCHOEN:

3 : 1 2 P M 5 Q. What was the description of the person that had the
3 : 1 2 P M 6 firearm?

3 : 1 2 P M 7 A. They believed to be a black male.

3 : 1 2 P M 8 Q. Now, did they believe it to be Mr. Fishburne?

3 : 1 3 P M 9 A. No, they did not.

3 : 1 3 P M 10 Q. So an unidentified black male was running with this
3 : 1 3 P M 11 firearm?

3 : 1 3 P M 12 A. Correct.

3 : 1 3 P M 13 Q. It was not Ms. Ellison?

3 : 1 3 P M 14 A. Yes.

3 : 1 3 P M 15 Q. And what, if anything, else were you able to determine
3 : 1 3 P M 16 about this particular firearm?

3 : 1 3 P M 17 A. I also was able to find some SLED laboratory reports that
3 : 1 3 P M 18 indicated that that Bersa firearm that Ms. Ellison purchased
3 : 1 3 P M 19 had been sent to SLED for analysis and was also test fired and
3 : 1 3 P M 20 a casing entered into NIBIN, and the test fired casing from
3 : 1 3 P M 21 that firearm matched shell casings that were recovered from a
3 : 1 3 P M 22 2011 shooting that occurred in Walterboro.

3 : 1 3 P M 23 Q. Was Ms. Ellison a suspect in that 2011 shooting?

3 : 1 3 P M 24 A. No, she was not.

3 : 1 3 P M 25 Q. Were any relatives of Ms. Ellison a suspect in that 2011

CALLAHAN - DIRECT EXAMINATION

3 : 1 3 P M 1 shooting?

3 : 1 3 P M 2 A. Her husband at the time was.

3 : 1 3 P M 3 Q. who was her husband?

3 : 1 3 P M 4 A. Moray Holmes.

3 : 1 3 P M 5 Q. where is Moray Holmes today?

3 : 1 3 P M 6 A. He is deceased.

3 : 1 3 P M 7 Q. So you indicated that she purchased the Bersa, she
3 : 1 4 P M 8 purchased the Jimenez, and she purchased the Smith & Wesson?

3 : 1 4 P M 9 A. Correct.

3 : 1 4 P M 10 Q. would it be accurate to say that none of those guns were
3 : 1 4 P M 11 recovered in her possession?

3 : 1 4 P M 12 A. They were not.

3 : 1 4 P M 13 Q. All of those guns were recovered by the police?

3 : 1 4 P M 14 A. Yes.

3 : 1 4 P M 15 Q. Are you aware of any other firearms she purchased?

3 : 1 4 P M 16 A. I am not.

3 : 1 4 P M 17 Q. Let's talk about the next thing did you to investigate the
3 : 1 4 P M 18 claims in those letters, the interview. Tell us about that
3 : 1 4 P M 19 interview.

3 : 1 4 P M 20 A. On July 10th of 2018, I went to her residence, or at least
3 : 1 4 P M 21 what was thought to be her residence. It was the address
3 : 1 4 P M 22 recorded on her driver's license at the time, where I met with
3 : 1 4 P M 23 her mother, and through the mother, we were able to coordinate
3 : 1 4 P M 24 me getting in contact with her, where she agreed to come to the
3 : 1 4 P M 25 residence to be interviewed, and at that time I had read her

CALLAHAN - DIRECT EXAMINATION

3 : 1 4 P M 1 her Miranda rights, and she stated that she understood by
3 : 1 4 P M 2 signing a Miranda form, and I indicated to her that I wanted to
3 : 1 4 P M 3 ask her about her relationship with Mr. Fishburne and talk to
3 : 1 5 P M 4 her about the firearms that she had purchased.

3 : 1 5 P M 5 Q. what, if anything, did you learn about the relationship
3 : 1 5 P M 6 she had with Mr. Fishburne?

3 : 1 5 P M 7 A. She told me that they had been in a relationship since
3 : 1 5 P M 8 2013.

3 : 1 5 P M 9 Q. what, if anything, did you learn about her -- her -- about
3 : 1 5 P M 10 what she knew about Mr. Fishburne's background?

3 : 1 5 P M 11 A. She indicated that she knew that he had been convicted of
3 : 1 5 P M 12 a crime that was a felony.

3 : 1 5 P M 13 Q. And what, if anything, did she say to you -- or what did
3 : 1 5 P M 14 you say to her, I guess I should say, about this pattern of
3 : 1 5 P M 15 activity?

3 : 1 5 P M 16 A. So I told her that -- I referenced her statement that was
3 : 1 5 P M 17 read to y'all a little while ago, and I told her that to me
3 : 1 5 P M 18 it -- her statement did not make sense based on the pattern of
3 : 1 5 P M 19 activity that I had seen occur, and that she had purchased
3 : 1 5 P M 20 three firearms, and that all three of those firearms had been
3 : 1 5 P M 21 recovered in the possession of somebody else, on two occasions
3 : 1 5 P M 22 Mr. Fishburne, and those people that were in possession of them
3 : 1 6 P M 23 were in some way in a relationship with her.

3 : 1 6 P M 24 Q. what did she say in response?

3 : 1 6 P M 25 A. When I confronted her with that information, she asked me

CALLAHAN - CROSS-EXAMINATION

3 : 1 6 P M 1 if she could recant her statement that she previously provided.

3 : 1 6 P M 2 Q. what else did she say?

3 : 1 6 P M 3 A. She indicated to me that she wanted to provide truthful
3 : 1 6 P M 4 information to me, but she was fearful that she -- she didn't
3 : 1 6 P M 5 want to get in trouble for anything that Mr. Fishburne had
3 : 1 6 P M 6 done, and she indicated that she wasn't comfortable moving
3 : 1 6 P M 7 forward without having an attorney. So at that point we
3 : 1 6 P M 8 concluded the interview.

3 : 1 6 P M 9 MR. SCHOEN: Beg the Court's indulgence for just a
3 : 1 6 P M 10 moment.

3 : 1 6 P M 11 (Pause.)

3 : 1 6 P M 12 MR. SCHOEN: No further questions at this time.
3 : 1 6 P M 13 Please answer any questions from opposing counsel.

3 : 1 7 P M 14 MR. SHAHID: Do you have Exhibit 10?

3 : 1 7 P M 15 THE WITNESS: I have a couple of items up here if
3 : 1 7 P M 16 you --

3 : 1 7 P M 17 MR. SHAHID: I just want number 10.

3 : 1 7 P M 18 CROSS-EXAMINATION

3 : 1 7 P M 19 BY MR. SHAHID:

3 : 1 7 P M 20 Q. Agent Callahan, you and I have previously met and talked;
3 : 1 7 P M 21 haven't we?

3 : 1 7 P M 22 A. Yes, we have.

3 : 1 7 P M 23 Q. So I want to go over with you Government's Exhibit Number
3 : 1 7 P M 24 9. This is Number 9, and on the very top of the form of
3 : 1 8 P M 25 Exhibit Number 9 is where the individual who wishes to purchase

CALLAHAN - CROSS-EXAMINATION

3 : 1 8 P M 1 a firearm from a licensed firearm dealer provides their name,
3 : 1 8 P M 2 and you've got -- blacked out their address but -- their
3 : 1 8 P M 3 address, correct?

3 : 1 8 P M 4 A. Yes, that's correct.

3 : 1 8 P M 5 Q. And city, and some other information about their
3 : 1 8 P M 6 identifying characteristics, size, weight, things of that
3 : 1 8 P M 7 nature?

3 : 1 8 P M 8 A. That's correct.

3 : 1 8 P M 9 Q. And date of birth?

3 : 1 8 P M 10 A. Yes.

3 : 1 8 P M 11 Q. And then on the side here are the questions that are asked
3 : 1 8 P M 12 of that individual, including, "Are you the actual buyer of the
3 : 1 8 P M 13 gun?"

3 : 1 8 P M 14 A. That is correct.

3 : 1 8 P M 15 Q. If they check "No," they can't get the gun?

3 : 1 8 P M 16 A. At that point the transaction should terminate.

3 : 1 8 P M 17 Q. And then on -- the other pages of this provides the
3 : 1 8 P M 18 identifying information like the person's South Carolina
3 : 1 8 P M 19 driver's license?

3 : 1 9 P M 20 A. Yes.

3 : 1 9 P M 21 Q. And information about the driver's license, when it
3 : 1 9 P M 22 expires?

3 : 1 9 P M 23 A. Correct.

3 : 1 9 P M 24 Q. And then on the last page, it provides information as to
3 : 1 9 P M 25 the identity of the firearm, including the serial number?

CALLAHAN - CROSS-EXAMINATION

3 : 1 9 P M 1 A. That's correct.

3 : 1 9 P M 2 Q. And same thing with Government's Exhibit Number 10. That
3 : 1 9 P M 3 has that same type of information --

3 : 1 9 P M 4 A. Yes.

3 : 1 9 P M 5 Q. -- correct?

3 : 1 9 P M 6 A. Yes, that's correct.

3 : 1 9 P M 7 Q. Now, in answer to a question by Government, I think you
3 : 1 9 P M 8 said earlier that there is nothing that prevents anybody from
3 : 1 9 P M 9 having a private transaction?

3 : 1 9 P M 10 A. The only thing is that you -- you can conduct a private
3 : 1 9 P M 11 transaction with somebody as long as you don't believe them to
3 : 2 0 P M 12 be prohibited from possessing firearms or to be a resident of
3 : 2 0 P M 13 another state.

3 : 2 0 P M 14 Q. I can walk down the street, run into somebody who I think
3 : 2 0 P M 15 has a gun for sale. I can give that person cash. That person
3 : 2 0 P M 16 can give me the gun?

3 : 2 0 P M 17 A. Sure.

3 : 2 0 P M 18 Q. There's no record of that?

3 : 2 0 P M 19 A. No paperwork is required for that individual transaction.

3 : 2 0 P M 20 Q. And if you want to go back and trace that transaction,
3 : 2 0 P M 21 you're not going to be able to do that. There's no paperwork
3 : 2 0 P M 22 on that?

3 : 2 0 P M 23 A. There -- no. Like I said, the trace will tell you the
3 : 2 0 P M 24 first original purchaser, and if you wanted to find out more
3 : 2 0 P M 25 than that, you would have to go and speak to that individual,

CALLAHAN - CROSS-EXAMINATION

1 find out what they did with the gun, and follow the chain, so
2 on and so forth.

3 Q. And that chain could go down from the manufacturer to the
4 licensed firearm dealer to the purchaser. Then it can go on
5 for whatever our imagination leads us to of how many
6 transactions that can -- can transpire. It could be one. It
7 could be a dozen. It could be a hundred?

8 A. That's possible, yes.

9 Q. That's all very possible. And the purposes of this form
10 4473 that we're going over and talking about was to allow you
11 to do your job, which is to trace back a firearm?

12 A. That's -- that's a secondary purpose of it. The main
13 purpose is to determine whether the individual that's buying
14 the gun is lawfully allowed to, but, yes, those forms are used
15 to help us complete that firearms trace process.

16 Q. Trace process. So if for some reason you needed to find
17 out information about a gun for whatever reason that you need
18 to, filling out that form from a licensed firearm dealer
19 creates a record?

20 A. Yes.

21 Q. Okay. And if I wanted you not to find out that I bought a
22 gun from a licensed firearm dealer, I could do what's called a
23 street transaction?

24 A. An individual sale?

25 Q. Yeah, an individual sale.

CALLAHAN - CROSS-EXAMINATION

3 : 2 2 P M 1 A. Sure.

3 : 2 2 P M 2 Q. Okay. And so what a person is doing, for lack of a better
3 : 2 2 P M 3 way of categorizing this, is they are legitimizing the process.
3 : 2 2 P M 4 They're giving you the opportunity to go back and say, "I'm the
3 : 2 2 P M 5 true purchaser, and here's the information so that if you need
3 : 2 2 P M 6 to come run me down, you got my address. You got my driver's
3 : 2 2 P M 7 license information. You got my date of birth. You got the
3 : 2 2 P M 8 serial number on the gun." You can do that because there's a
3 : 2 2 P M 9 record of it?

3 : 2 2 P M 10 A. Yes, the paperwork does make that process easier for us.

3 : 2 2 P M 11 Q. And absent that paperwork, you don't have the person's
3 : 2 2 P M 12 identity, right?

3 : 2 2 P M 13 A. Correct.

3 : 2 2 P M 14 Q. You don't have their driver's license, correct?

3 : 2 2 P M 15 A. That's correct.

3 : 2 2 P M 16 Q. You don't have their date of birth, correct?

3 : 2 2 P M 17 A. Correct.

3 : 2 2 P M 18 Q. And you don't have that serial number?

3 : 2 2 P M 19 A. Correct.

3 : 2 2 P M 20 Q. So the right way of doing it is what's shown on Exhibit
3 : 2 3 P M 21 Number 9 and Number 10, the two forms?

3 : 2 3 P M 22 A. It's one way. I wouldn't say it's the right way, because
3 : 2 3 P M 23 there's other lawful ways to do it, but filling out the
3 : 2 3 P M 24 paperwork at a gun store is certainly one way to do the
3 : 2 3 P M 25 transaction.

CALLAHAN - CROSS-EXAMINATION

3 : 2 3 P M 1 Q. Unless I do a personal bill of sale, you're not going to
3 : 2 3 P M 2 have a record of transaction of that?

3 : 2 3 P M 3 A. In most cases, no.

3 : 2 3 P M 4 Q. So if I want to hide and try to avoid you making a
3 : 2 3 P M 5 detection of the trace of that gun, I wouldn't go through that
3 : 2 3 P M 6 process. I would make it more difficult for you; wouldn't I?

3 : 2 3 P M 7 A. It would make it more difficult, yes.

3 : 2 3 P M 8 Q. Almost to the point where your investigation would run
3 : 2 3 P M 9 cold?

3 : 2 3 P M 10 A. I couldn't say. It would depend on other factors involved
3 : 2 3 P M 11 as well.

3 : 2 3 P M 12 Q. And I think you testified earlier that to become a
3 : 2 4 P M 13 licensed dealer, you got to go through this routine of being
3 : 2 4 P M 14 checked out and making sure you are qualified to be a licensed
3 : 2 4 P M 15 dealer, and before I walk out the store -- when I make the
3 : 2 4 P M 16 purchase, I make the application for the purchase, there's a
3 : 2 4 P M 17 waiting period as well, that you do a background check for that
3 : 2 4 P M 18 person, make sure they're okay to have the gun, right?

3 : 2 4 P M 19 A. It's not waiting period per se. There's no waiting period
3 : 2 4 P M 20 in South Carolina. What I'd indicated is that if there is a
3 : 2 4 P M 21 delayed response to the background check, then that will
3 : 2 4 P M 22 postpone the sale at that time, but if an individual passes a
3 : 2 4 P M 23 background check right away and there's a proceed response,
3 : 2 4 P M 24 then the individual can walk out of the gun store right then
3 : 2 4 P M 25 and there with the gun.

CALLAHAN - CROSS-EXAMINATION

3 : 2 4 P M 1 Q. I mean, you still got to go through the background check?

3 : 2 4 P M 2 A. Yes.

3 : 2 4 P M 3 Q. No matter what the wait is, there's got to be some kind of
3 : 2 4 P M 4 verification that the person is legitimate?

3 : 2 4 P M 5 A. Yes.

3 : 2 4 P M 6 Q. And there's no question that the firearm that's referenced
3 : 2 5 P M 7 in Exhibit Number 9, the Jimenez firearm, was returned to
3 : 2 5 P M 8 Ms. Ellison?

3 : 2 5 P M 9 A. Yes, it was returned to her based on the paperwork.

3 : 2 5 P M 10 Q. And we know from the paperwork information that from
3 : 2 5 P M 11 the -- the recovery of the gun in May of 2014 through December
3 : 2 5 P M 12 of 2014, it was in police custody?

3 : 2 5 P M 13 A. As far as I've been able to tell. I don't think I've seen
3 : 2 5 P M 14 any documentation that would show that it was elsewhere.

3 : 2 6 P M 15 Q. Let me have these other exhibits. Now, so in Exhibit
3 : 2 6 P M 16 Number --

3 : 2 6 P M 17 A. It might be inside the envelope.

3 : 2 6 P M 18 Q. The shell casings? which is 11, 12 and 13. These are
3 : 2 6 P M 19 what you call spent shell casings, right?

3 : 2 6 P M 20 A. That's correct.

3 : 2 6 P M 21 Q. In other words, they've been discharged?

3 : 2 6 P M 22 A. Yes.

3 : 2 6 P M 23 Q. All right. And when you load a firearm, you're going to
3 : 2 6 P M 24 pick up -- before the spent shell, it's got the bullet in it
3 : 2 6 P M 25 still?

CALLAHAN - CROSS-EXAMINATION

3 : 2 6 P M 1 A. Correct.

3 : 2 6 P M 2 Q. And you're going to put it in the magazine, so you're
3 : 2 6 P M 3 touching it?

3 : 2 6 P M 4 A. Yes.

3 : 2 6 P M 5 Q. And if you're handling the firearm and you're handling the
3 : 2 7 P M 6 clip, you're touching it?

3 : 2 7 P M 7 A. Generally, yes.

3 : 2 7 P M 8 Q. And when you're doing that, you can pick up fingerprints
3 : 2 7 P M 9 from that?

3 : 2 7 P M 10 A. Sometimes it's possible. Sometimes it's not there.

3 : 2 7 P M 11 Q. And I think what you testified earlier that by the time
3 : 2 7 P M 12 you got involved in all of this, one gun was already returned
3 : 2 7 P M 13 back to Ms. Ellison, and the other gun was spoiled. I think
3 : 2 7 P M 14 you used the word "spoiled" or "not preserved", I think was the
3 : 2 7 P M 15 words that you used, to make a determination from your
3 : 2 7 P M 16 examination of fingerprint analysis; is that correct?

3 : 2 7 P M 17 A. That's correct.

3 : 2 7 P M 18 Q. When you went to interview Ms. Ellison in 2018, that was
3 : 2 8 P M 19 April or May of 2018?

3 : 2 8 P M 20 A. I interviewed her July 10th of 2018.

3 : 2 8 P M 21 Q. I'm sorry. July 10th, 2018. She voluntarily agreed to
3 : 2 8 P M 22 meet with you?

3 : 2 8 P M 23 A. Yes, she did.

3 : 2 8 P M 24 Q. You identified yourself as a law enforcement officer?

3 : 2 8 P M 25 A. Yes.

CALLAHAN - CROSS-EXAMINATION

3 : 2 8 P M 1 Q. And she was there without a lawyer?

3 : 2 8 P M 2 A. Correct.

3 : 2 8 P M 3 Q. And you read her her Miranda rights?

3 : 2 8 P M 4 A. I did.

3 : 2 8 P M 5 Q. Even though she may not have been in custody, you advised
3 : 2 8 P M 6 her of her Miranda rights?

3 : 2 8 P M 7 A. That's correct.

3 : 2 8 P M 8 Q. And at some point in time she wanted to terminate the
3 : 2 8 P M 9 conversation without talking to a lawyer?

3 : 2 8 P M 10 A. That's correct.

3 : 2 8 P M 11 Q. But she did it voluntarily?

3 : 2 8 P M 12 A. Yes.

3 : 2 8 P M 13 Q. She was not under a subpoena of any sort?

3 : 2 8 P M 14 A. No.

3 : 2 8 P M 15 Q. Or forced to meet with you?

3 : 2 8 P M 16 A. No.

3 : 2 9 P M 17 MR. SHAHID: Give me just one second.

3 : 2 9 P M 18 THE COURT: Sure.

3 : 2 9 P M 19 (Pause.)

3 : 2 9 P M 20 MR. SHAHID: Thank you. That's all the questions I
3 : 2 9 P M 21 have.

3 : 2 9 P M 22 THE WITNESS: Thank you.

3 : 2 9 P M 23 MR. SCHOEN: Brief redirect?

3 : 2 9 P M 24 THE COURT: Sure.

3 : 2 9 P M 25

CALLAHAN - REDIRECT EXAMINATION

REDIRECT EXAMINATION

BY MR. SCHOEN:

Q. Mr. Shahid asked you some questions about firearms transactions that are conducted without the background forms. He's calling them street transactions. As he pointed out, there's no way to get those -- no records of those that exist, so is it possible that Ms. Ellison has purchased additional guns?

A. Yes, it is possible.

Q. It was suggested that you wouldn't have any way to investigate a private sale. How do you go about investigating -- if you get a gun, and there's -- you find a gun at a crime scene or a gun comes back as a match for a crime scene, how do you go about investigating whether or not -- trying to figure out who has that gun based on these records?

A. It all goes back to the firearms trace, to that original purchaser and starting there; finding out what they did with the gun, going and talking to the next person, seeing what they did with it, and hopefully it leads us back to the crime scene.

Q. So just because you don't have a record of every single transaction doesn't prohibit you from following that trail and trying to figure out who purchased the gun?

A. No, it doesn't.

MR. SCHOEN: Court's indulgence?

THE COURT: Sure.

CALLAHAN - RECROSS-EXAMINATION

(Pause.)

MR. SCHOEN: No further questions.

RECROSS-EXAMINATION

BY MR. SHAHID:

Q. Did you have an opportunity, Agent Callahan, to interview the licensed firearm dealers about these transactions?

A. I don't think that I interviewed them per se. I just -- I spoke with them in reference to obtaining the records.

Q. But nothing detailed about investigation concerning the transaction with Ms. Ellison and what transpired between the seller and the buyer of those two particular firearms?

A. No, I don't believe so.

MR. SHAHID: Okay. Thank you.

THE COURT: Thank you, Special Agent.

(Witness excused.)

MR. SCHOEN: Your Honor, the Government calls Chad Smith.

MS. HENDERSON: Your Honor, we're going to figure out what's going on.

THE COURT: All right. Why don't you go back to your jury room while they try to find their witness? It's more comfortable in there than it is in here.

(Jury out at 3:34 p.m.)

MS. HENDERSON: I think he was in the restroom.

THE MARSHAL: They got him.

3 : 3 5 P M 1 THE COURT: Okay.

3 : 3 5 P M 2 MR. SHAHID: Good timing for a mid afternoon break.

3 : 3 5 P M 3 THE COURT: Why don't we just take five minutes
4 anyway? Just relax. Is this your last witness?

3 : 3 5 P M 5 MS. HENDERSON: Yes, Your Honor.

3 : 3 5 P M 6 THE COURT: Then you're going rest, and then we'll
7 quit for the day? All right.

8 (Recess from 3:35 p.m. to 3:44 p.m.)

3 : 4 4 P M 9 THE COURT: Take your seat. Thanks. All right. So
10 we have our greatly-relieved witness here?

3 : 4 4 P M 11 MR. SCHOEN: Yes, Your Honor.

3 : 4 4 P M 12 THE COURT: Okay. All right. Bring them in.

13 (Jury in at 3:44 p.m.)

3 : 4 6 P M 14 THE COURT: Yes, sir?

3 : 4 6 P M 15 MR. SCHOEN: The Government calls Chad Smith.

3 : 4 6 P M 16 COURTROOM DEPUTY: Please stop right here and be
17 sworn for me. Place your left hand on the Bible and raise your
18 right hand.

3 : 4 6 P M 19 (Witness sworn.)

3 : 4 6 P M 20 COURTROOM DEPUTY: Thank you. You may have a seat.

3 : 4 7 P M 21 CHAD SMITH,
22 a witness called on behalf of the Government, being first duly
23 sworn, was examined and testified as follows:

3 : 4 7 P M 24 DIRECT EXAMINATION

3 : 4 7 P M 25 BY MR. SCHOEN:

SMITH - DIRECT EXAMINATION

3 : 4 7 P M 1 Q. Good afternoon, Mr. Smith.

3 : 4 7 P M 2 A. Good afternoon.

3 : 4 7 P M 3 Q. Can you please tell the jury where you're employed?

3 : 4 7 P M 4 A. I'm employed with the South Carolina Law Enforcement
3 : 4 7 P M 5 Division, which is commonly known as SLED.

3 : 4 7 P M 6 Q. What's your position with SLED?

3 : 4 7 P M 7 A. I'm a forensic scientist in the firearms department at
3 : 4 7 P M 8 SLED's forensic services laboratory in Columbia.

3 : 4 7 P M 9 Q. How long have you been employed by SLED?

3 : 4 7 P M 10 A. It's 11 years and a few months now.

3 : 4 7 P M 11 Q. Can you tell us about your education?

3 : 4 7 P M 12 A. I attended Clemson University, where I earned a bachelor
3 : 4 7 P M 13 of science degree in biological sciences.

3 : 4 7 P M 14 Q. What type of training do you need to become a firearms
3 : 4 7 P M 15 examiner?

3 : 4 7 P M 16 A. Well, all the training that we do at SLED is supervised
3 : 4 7 P M 17 and taught in-house. There's a training program that lasts
3 : 4 7 P M 18 between three to five years. It involves extensive reading and
3 : 4 7 P M 19 studying. There are multiple examinations and tests given
3 : 4 8 P M 20 during that time. Also attended various classes and seminars.
3 : 4 8 P M 21 Later in my training, I helped the other examiners prepare
3 : 4 8 P M 22 their casework, and at the end of my training period, I
3 : 4 8 P M 23 received a comprehensive multipart examination which I
3 : 4 8 P M 24 successfully completed, and then I began to receive my
3 : 4 8 P M 25 casework.

SMITH - DIRECT EXAMINATION

3 : 4 8 P M 1 Q. Are you part of any professional associations?

3 : 4 8 P M 2 A. Yes, sir, I am.

3 : 4 8 P M 3 Q. What professional association?

3 : 4 8 P M 4 A. I'm a member of AFTE, A-F-T-E, Association of Firearm and
3 : 4 8 P M 5 Toolmark Examiners. It's worldwide organization whose purpose
3 : 4 8 P M 6 is to further the advancement of the field.

3 : 4 8 P M 7 Q. How many firearms -- roughly how many firearms
3 : 4 8 P M 8 examinations have you conducted over the course of your career?

3 : 4 8 P M 9 A. Just looking at various guns and cartridge cases and
3 : 4 8 P M 10 bullets, I would say in the thousands, if you compare, you
3 : 4 8 P M 11 know, samples one-to-one.

3 : 4 8 P M 12 Q. Have you been admitted as an expert in firearms
3 : 4 8 P M 13 identification to testify in court before?

3 : 4 9 P M 14 A. Yes, sir.

3 : 4 9 P M 15 Q. How many times approximately?

3 : 4 9 P M 16 A. Over 70 times.

3 : 4 9 P M 17 Q. Have you ever not been admitted as an expert?

3 : 4 9 P M 18 A. No, sir.

3 : 4 9 P M 19 MR. SCHOEN: Your Honor, at this point the Government
3 : 4 9 P M 20 would move to admit Chad Smith as an expert in the field of
3 : 4 9 P M 21 firearms identification.

3 : 4 9 P M 22 MR. SHAHID: No objection.

3 : 4 9 P M 23 THE COURT: Okay. Go ahead.

3 : 4 9 P M 24 BY MR. SCHOEN:

3 : 4 9 P M 25 Q. I want to start out by approaching you with what's

SMITH - DIRECT EXAMINATION

3 : 4 9 P M 1 previously been marked as Government's Exhibit 6. Can you tell
3 : 4 9 P M 2 us what that is?

3 : 4 9 P M 3 A. Ladies and gentlemen, if it hasn't been said before, this
3 : 4 9 P M 4 firearm is safe to handle. I can see that there's no
3 : 4 9 P M 5 ammunition in the gun, and it has a cable lock going through
3 : 4 9 P M 6 it, so it can't be loaded or fired.

3 : 4 9 P M 7 Yes, this is a Smith & Wesson brand pistol that I
3 : 4 9 P M 8 received for examination.

3 : 5 0 P M 9 Q. And as an expert in firearms identification, can you just
3 : 5 0 P M 10 tell us a little bit about how that pistol works?

3 : 5 0 P M 11 A. Well, this is a semiautomatic pistol, as compared to a
3 : 5 0 P M 12 revolver. Those are two main types of handguns we receive for
3 : 5 0 P M 13 examination and that we see in our casework. In this
3 : 5 0 P M 14 particular instance, a semiautomatic pistol, it uses a
3 : 5 0 P M 15 detachable box magazine. So you put the cartridges or rounds
3 : 5 0 P M 16 of ammunition in the magazine, and then you would load the
3 : 5 0 P M 17 handgun by putting the magazine into the grip area. Then you
3 : 5 0 P M 18 would -- this portion here is called the slide. You have to
3 : 5 0 P M 19 retract the slide. It's under spring tension. Let the slide
3 : 5 0 P M 20 go, and then a round is chambered from the magazine into the
3 : 5 0 P M 21 chamber which is the rearward portion of the barrel, and then
3 : 5 0 P M 22 it's ready for firing.

3 : 5 0 P M 23 So at that point you could pull the trigger. The
3 : 5 0 P M 24 striker or firing pin would strike the rear of the cartridge.
3 : 5 1 P M 25 It's the primer portion of the cartridge which ignites the

SMITH - DIRECT EXAMINATION

3 : 5 1 P M 1 cartridge. It strikes that primer. Gas builds up inside the
3 : 5 1 P M 2 cartridge case, because once the primer is ignited, it ignites
3 : 5 1 P M 3 the gunpowder inside the cartridge. That creates a volume of
3 : 5 1 P M 4 gas. That pressure forces the bullet out of the cartridge --
3 : 5 1 P M 5 out of the cartridge case, excuse me, down the barrel, and then
3 : 5 1 P M 6 the cartridge case is pressed rearward up against this portion
3 : 5 1 P M 7 here of the slide which is called the breach face. So in that
3 : 5 1 P M 8 cycling action, it pushes the slide rearward. The fired
3 : 5 1 P M 9 cartridge case is then extracted, ejected out of the firearm.
3 : 5 1 P M 10 Again, it's under spring tension, so when the slide comes
3 : 5 1 P M 11 forward again, it takes another round from the magazine, puts
3 : 5 1 P M 12 it in the chamber, and again it's ready for firing.

3 : 5 1 P M 13 Q. Thank you. I want to talk a little bit about the science
3 : 5 1 P M 14 behind your field. What is firearms identification generally?

3 : 5 2 P M 15 A. Firearms identification is an area of forensic science in
3 : 5 2 P M 16 which we try to determine if a specific ammunition component,
3 : 5 2 P M 17 like a bullet or a cartridge case, was fired by a particular
3 : 5 2 P M 18 firearm. How we're able to do that is during the manufacturing
3 : 5 2 P M 19 of a firearm, all the various pieces that are -- that form the
3 : 5 2 P M 20 firearm itself are marked by the tooling and other finishing
3 : 5 2 P M 21 steps to create those parts, machining, things like that, and
3 : 5 2 P M 22 it's basically the machines and other finishing that are
3 : 5 2 P M 23 marking those parts, totally random in nature. They're just
3 : 5 2 P M 24 basically microscopic defects that are placed on there. The
3 : 5 2 P M 25 manufacturer doesn't call for these microscopic defects or

SMITH - DIRECT EXAMINATION

1 anything like that. It's just created during the manufacturing
2 itself.

3 So when a firearm is assembled and then goes on to
4 the owner, when it's fired, the parts of the firearm that come
5 in contact with the cartridge, whether it be the cartridge case
6 itself or the bullet, can impart those marks onto the cartridge
7 case or the bullet. Again, it's at a microscopic level. We
8 use -- it's called a comparison microscope to do our
9 microscopic examinations, and then we can try to determine --
10 by test firing a firearm, compare those test fires with
11 submitted evidence, whether it be a cartridge case or a bullet,
12 to determine if it was fired by a specific gun or that
13 particular gun.

14 Q. So at the microscopic level, are firearms unique?

15 A. Yes, they can be. Now, not all marks that are created are
16 unique, so we have to through experience and training kind of
17 learn to look at the -- what we think are unique individual
18 characteristics. Again, not all of the marks have to be
19 individual, but that's what we're looking at at the microscopic
20 level.

21 Q. Have you ever seen two different guns produce shell
22 casings that look identical, exactly the same?

23 A. Exactly the same, no, I haven't.

24 Q. How long has this field been around for?

25 A. Well over a hundred years. The basic science and

SMITH - DIRECT EXAMINATION

3 : 5 4 P M 1 foundations have been well over a hundred years. Now, the
3 : 5 4 P M 2 technology has gotten better, again with -- the microscopes and
3 : 5 4 P M 3 other tools that we use have gotten much better, but the field
3 : 5 4 P M 4 has been around for a long time.

3 : 5 4 P M 5 Q. what checks are in place to ensure that your conclusions
3 : 5 4 P M 6 are reliable?

3 : 5 4 P M 7 A. we have a peer-review process in our laboratory. So after
3 : 5 4 P M 8 I look at evidence, test fire guns, compare test fires and
3 : 5 4 P M 9 evidence and formulate my own results, then I have another
3 : 5 4 P M 10 qualified examiner come back behind me, look at the evidence
3 : 5 4 P M 11 themselves, formulate their own opinions, and then when they're
3 : 5 5 P M 12 ready to look at my results, they can look at my results, and
3 : 5 5 P M 13 if they agree with me, then they sign off on the form. If
3 : 5 5 P M 14 there's some discrepancy, then we can get a third party
3 : 5 5 P M 15 involved, another examiner to try to -- to try to reach a
3 : 5 5 P M 16 conclusion, but in my experience that hasn't happened, but we
3 : 5 5 P M 17 have another examiner come back to check our work just to make
3 : 5 5 P M 18 sure that our opinions and conclusions would be correct.

3 : 5 5 P M 19 Q. Are the methods that you are relying on generally accepted
3 : 5 5 P M 20 by experts in your field?

3 : 5 5 P M 21 A. Yes, sir.

3 : 5 5 P M 22 Q. I want to -- there's been a little bit of discussion about
3 : 5 5 P M 23 NIBIN. Can you tell us what NIBIN is?

3 : 5 5 P M 24 A. NIBIN is the National Integrated Ballistics Information
3 : 5 5 P M 25 Network. That is a network all across the country that I

SMITH - DIRECT EXAMINATION

3 : 5 5 P M 1 believe was started by the ATF, and what that does is we have a
3 : 5 5 P M 2 machine. It's called the IBIS machine in our particular lab,
3 : 5 6 P M 3 and there's some other agencies throughout the state that have
3 : 5 6 P M 4 their own IBIS machines as well. IBIS is Integrated Ballistics
3 : 5 6 P M 5 Identification System. So that's actually the computer system
3 : 5 6 P M 6 that's located out of agency. What we can do is we put
3 : 5 6 P M 7 cartridge cases into the system. It scans it. It takes
3 : 5 6 P M 8 basically digital images of the rear part of the cartridge
3 : 5 6 P M 9 case, again the part that would contact the breach face here
3 : 5 6 P M 10 during firing. It takes pictures of the firing pin impression
3 : 5 6 P M 11 left on the cartridge case as well, and then it stores it, and
3 : 5 6 P M 12 so what it can do is it can search other images that are in the
3 : 5 6 P M 13 system to see if there's any correlations between entries.

3 : 5 6 P M 14 And then so an IBIS technician can go back, look at
3 : 5 6 P M 15 correlations. IBIS can bring back a certain amount, top 20
3 : 5 7 P M 16 let's say, what it thinks looks the best, and then a technician
3 : 5 7 P M 17 would go back, look at these images and say, yes, if the images
3 : 5 7 P M 18 look good enough, they would submit the specimens to SLED to be
3 : 5 7 P M 19 confirmed if they were fired by the same gun.

3 : 5 7 P M 20 Q. would it be fair in some ways to analogize to like a
3 : 5 7 P M 21 fingerprint database or a DNA database where a sample is put in
3 : 5 7 P M 22 input, and you can search to see if there's matches?

3 : 5 7 P M 23 A. Right. that's exactly right. So we're just comparing
3 : 5 7 P M 24 other images that are in the system to see if there's any link
3 : 5 7 P M 25 to possible crimes.

SMITH - DIRECT EXAMINATION

3 : 5 7 P M 1 Q. So if there is a link, is that the end of the process?

3 : 5 7 P M 2 A. No. Again, that's just -- that could be just the
3 : 5 7 P M 3 screening tool itself. So once they find the lead, they would
3 : 5 7 P M 4 submit us -- to us the evidence specimens, and then we would
3 : 5 7 P M 5 have to confirm whether a particular gun was fired by -- or
3 : 5 7 P M 6 excuse me, a particular cartridge case was fired by a
3 : 5 8 P M 7 particular gun.

3 : 5 8 P M 8 Q. Did you have an IBIS lead in this case?

3 : 5 8 P M 9 A. Yes, sir, I did.

3 : 5 8 P M 10 Q. Okay. Let me approach with what's previously been marked
3 : 5 8 P M 11 as Government's Exhibits 11, 12 and 13. Do you recognize
3 : 5 8 P M 12 Government's Exhibits 11, 12 and 13?

3 : 5 8 P M 13 A. Yes, sir. These are three cartridge cases that were
3 : 5 8 P M 14 submitted for examination and comparison with the gun.

3 : 5 8 P M 15 Q. What caliber are those cartridge cases?

3 : 5 8 P M 16 A. .40 Smith & Wesson caliber.

3 : 5 8 P M 17 Q. Is that the caliber of ammunition you fire out of that
3 : 5 8 P M 18 gun?

3 : 5 8 P M 19 A. Correct.

3 : 5 8 P M 20 Q. And what, if any, conclusions did you draw about the
3 : 5 8 P M 21 firearm that fired those three cartridges?

3 : 5 8 P M 22 A. Well, I was able to determine -- first of all, what I
3 : 5 8 P M 23 would do is compare these three cartridge cases with each other
3 : 5 8 P M 24 to confirm that they were fired by the same gun, which they
3 : 5 8 P M 25 were. I concluded they were fired by the same gun, and then I

SMITH - DIRECT EXAMINATION

3 : 5 9 P M 1 would test fire this particular gun, and the way we do that is
3 : 5 9 P M 2 in our laboratory we have a vertical water tank. We shoot into
3 : 5 9 P M 3 the water tank. The water slows down the bullet, and we can
3 : 5 9 P M 4 retrieve the bullet by basically -- it's just a cup on a chain
3 : 5 9 P M 5 that we just pull up from the bottom of the tank, and then the
3 : 5 9 P M 6 cartridge cases go into a little box, a little plastic box that
3 : 5 9 P M 7 we have set up. So it ejects into the box so we have our
3 : 5 9 P M 8 samples, test fires that we can compare with each other.

3 : 5 9 P M 9 So test fire the firearm. The firearm functioned
3 : 5 9 P M 10 properly, and then I compared those test fires using our
3 : 5 9 P M 11 comparison microscope, and the comparison microscope is
3 : 5 9 P M 12 basically two microscopes that's connected by an optical bridge
3 : 5 9 P M 13 system. So we can compare two samples simultaneously, looking
3 : 5 9 P M 14 for those marks that we feel are individual in nature, and so
3 : 5 9 P M 15 compare the test fires with each other, and then I compare the
3 : 5 9 P M 16 test fires with the cartridge cases that are submitted as
4 : 0 0 P M 17 evidence.

4 : 0 0 P M 18 Then I was able to determine that the firearm that
4 : 0 0 P M 19 was submitted, Government Exhibit 6, did fire these three
4 : 0 0 P M 20 cartridge cases, Government Exhibits 11 through 13.

4 : 0 0 P M 21 Q. Did you reach that conclusion to a reasonable degree of
4 : 0 0 P M 22 scientific certainty.

4 : 0 0 P M 23 A. Yes, sir.

4 : 0 0 P M 24 Q. Did you prepare a report summarizing your conclusions?

4 : 0 0 P M 25 A. I did.

SMITH - DIRECT EXAMINATION

4 : 0 0 P M 1 MR. SCHOEN: Your Honor, permission to approach the
4 : 0 0 P M 2 witness with what's been previously marked as Government's
4 : 0 0 P M 3 Exhibit 15?

4 : 0 0 P M 4 THE COURT: Sure.

4 : 0 0 P M 5 BY MR. SCHOEN:

4 : 0 0 P M 6 Q. Can you identify Government's Exhibit 15?

4 : 0 0 P M 7 A. Yes, sir. This is a copy of the report I issued.

4 : 0 0 P M 8 Q. Is it a fair and accurate copy of your report?

4 : 0 0 P M 9 A. I'm just comparing it quickly with a copy that I have here
4 : 0 0 P M 10 myself, just to make sure it's all in there.

4 : 0 1 P M 11 (Pause.)

4 : 0 1 P M 12 A. Yes, this is an accurate copy of my report.

4 : 0 1 P M 13 MR. SCHOEN: Government would move Exhibit 15 into
4 : 0 1 P M 14 evidence.

4 : 0 1 P M 15 MR. SHAHID: Subject to my prior objection, Your
4 : 0 1 P M 16 Honor.

4 : 0 1 P M 17 THE COURT: Sure. In evidence.

4 : 0 1 P M 18 MR. SCHOEN: Permission to publish to the jury?

4 : 0 1 P M 19 THE COURT: Sure.

4 : 0 1 P M 20 BY MR. SCHOEN:

4 : 0 1 P M 21 Q. If you look towards the bottom of that report, Mr. Smith,
4 : 0 1 P M 22 it references items 6 through 8. Can you tell us what are
4 : 0 2 P M 23 items 6 through 8 in this case? So you have -- you had items
4 : 0 2 P M 24 marked as 6 through 8. What exhibit numbers did those items
4 : 0 2 P M 25 have in this case?

SMITH - CROSS-EXAMINATION

4 : 0 2 P M 1 A. Items 6 through 8 were the SLED lab item numbers, so when
4 : 0 2 P M 2 an agency submits items of evidence to SLED, we give it its own
4 : 0 2 P M 3 item number, so usually it's different from what a submitting
4 : 0 2 P M 4 agency would be, just so we can keep track internally of what
4 : 0 2 P M 5 items we have, but in this particular case, items 6 through 8
4 : 0 2 P M 6 were the same items as Government Exhibits 11 through 13.

4 : 0 2 P M 7 Q. And what's item 1?

4 : 0 2 P M 8 A. Item 1 is this firearm here, State -- or excuse me,
4 : 0 2 P M 9 Government Exhibit 6.

4 : 0 2 P M 10 Q. And what's item 1.1?

4 : 0 2 P M 11 A. Item 1.1 are test specimens that I created myself. So
4 : 0 3 P M 12 again, those are the test specimens that I fired out of this
4 : 0 3 P M 13 particular gun, and then I gave them item 1.1.

4 : 0 3 P M 14 Q. And does item 1.1 match items 6 through 8 in your report?

4 : 0 3 P M 15 A. Correct. I would have used those test specimens to
4 : 0 3 P M 16 compare with items 6 through 8, and again I concluded that that
4 : 0 3 P M 17 particular firearm did fire three cartridge cases that were
4 : 0 3 P M 18 submitted.

4 : 0 3 P M 19 MR. SCHOEN: Brief indulgence, Your Honor.

4 : 0 3 P M 20 THE COURT: Sure.

4 : 0 3 P M 21 MR. SCHOEN: No further questions for this witness at
4 : 0 3 P M 22 this time. Mr. Smith, please answer any questions of opposing
4 : 0 3 P M 23 counsel.

4 : 0 3 P M 24 THE WITNESS: Yes, sir.

4 : 0 3 P M 25 CROSS-EXAMINATION

SMITH - CROSS-EXAMINATION

BY MR. SHAHID:

Q. Mr. Smith, I'm Peter Shahid. I represent Mr. Fishburne. Are Exhibits 1.1 with us today?

A. No, sir. 1.1 we retained at SLED for a period of time. Then we return those test specimens at a later date to the submitting agency.

Q. And so -- make sure we're clear on what we're doing here, you received Exhibits 11, 12, and 13?

A. Correct.

Q. You created your own exhibits, Exhibit 1.1 in your report, and those were test fired using that gun, Government's Exhibit Number 6, but we don't have those samples with us today?

A. No, sir. Again, we retain those at SLED. That's partly in -- due to the fact that we can use those test specimens again in case we need them later on, if we get another IBIS hit or a lead. Then if we don't have the gun itself, we can use test specimens fired from that gun.

Q. As you were going through the examination of Exhibit Number 6 and how this was -- this thing operated, you held the gun in your hand, correct?

A. Yes, sir.

Q. And this metal piece is a clip?

A. Magazine, yes, sir.

Q. The magazine, and that magazine goes in here?

A. Correct.

SMITH - CROSS-EXAMINATION

4 : 0 5 P M 1 Q. Is that right?

4 : 0 5 P M 2 A. That is correct.

4 : 0 5 P M 3 Q. And to load this, you've got to take this metal thing
4 : 0 5 P M 4 right here in my hand, this magazine or a clip, and that's
4 : 0 5 P M 5 where you put the bullets in here?

4 : 0 5 P M 6 A. Correct. The cartridges are inserted one at a time in the
4 : 0 5 P M 7 magazine.

4 : 0 5 P M 8 Q. Like a little spring into here that pushes down as you
4 : 0 5 P M 9 load, is it?

4 : 0 5 P M 10 A. That's correct.

4 : 0 5 P M 11 Q. And you would take bullets, something like this, and have
4 : 0 5 P M 12 to hold them and handle them to stick them into this cartridge?

4 : 0 5 P M 13 A. Correct.

4 : 0 5 P M 14 Q. Or magazine, or whatever?

4 : 0 5 P M 15 A. Magazine is the proper term.

4 : 0 5 P M 16 Q. Magazine, proper term. And so when you're doing that,
4 : 0 5 P M 17 you're handling all of that. You're handling the gun. You're
4 : 0 5 P M 18 handling this item, and then you're handling the actual bullets
4 : 0 6 P M 19 as well?

4 : 0 6 P M 20 A. Yes, sir.

4 : 0 6 P M 21 Q. And as I understand your testimony, your involvement with
4 : 0 6 P M 22 all of this is just to have tested those cartridges, Exhibit
4 : 0 6 P M 23 11, 12, and 13?

4 : 0 6 P M 24 A. Correct. I was asked to examine the firearm and to see if
4 : 0 6 P M 25 they -- see if it had possibly fired the cartridge cases, and

SMITH - CROSS-EXAMINATION

4 : 0 6 P M 1 it was based on the IBIS lead that was generated previously.

4 : 0 6 P M 2 Q. And what you're doing with this, as I understand as well,
4 : 0 6 P M 3 is that you're doing a physical eye examination through use of
4 : 0 6 P M 4 a microscope to help to assist you look at those small markings
4 : 0 6 P M 5 on there?

4 : 0 6 P M 6 A. Correct.

4 : 0 6 P M 7 Q. And as you said earlier, some of those markings may be
4 : 0 6 P M 8 unique to that particular firearm because of the markings it
4 : 0 6 P M 9 makes on the strike part of the gun?

4 : 0 6 P M 10 A. Right.

4 : 0 6 P M 11 Q. So it is possible that similar markings could be made from
4 : 0 6 P M 12 different guns that you could compare; is that a fair
4 : 0 7 P M 13 statement?

4 : 0 7 P M 14 A. If you have more than one of the same type of gun, there
4 : 0 7 P M 15 may be similar markings. Again, we're looking for markings
4 : 0 7 P M 16 that we believe are the individual markings unique to a
4 : 0 7 P M 17 particular firearm, so you may have some marks that could carry
4 : 0 7 P M 18 over from one gun to the next, but we're looking for the
4 : 0 7 P M 19 individual marks.

4 : 0 7 P M 20 Q. And you're not videotaping or recording how you're doing
4 : 0 7 P M 21 this testing? This is just how you operate in your lab at SLED
4 : 0 7 P M 22 without any other type of visual aid for the jury to be looking
4 : 0 7 P M 23 at as you're going through this process; is that a fair
4 : 0 7 P M 24 statement?

4 : 0 7 P M 25 A. Right. We don't videotape any of the analysis.

SMITH - CROSS-EXAMINATION

4 : 0 7 P M 1 MR. SHAHID: Give me one second.

4 : 0 7 P M 2 (Pause.)

4 : 0 8 P M 3 MR. SHAHID: Nothing further. Thank you.

4 : 0 8 P M 4 MR. SCHOEN: No redirect, Your Honor.

4 : 0 8 P M 5 THE COURT: You can go back to Columbia if you want
4 : 0 8 P M 6 to.

4 : 0 8 P M 7 THE WITNESS: Yes, sir.

4 : 0 8 P M 8 (Witness excused.)

4 : 0 8 P M 9 THE COURT: Yes, sir?

4 : 0 8 P M 10 MR. SCHOEN: Your Honor, the Government rests.

4 : 0 8 P M 11 THE COURT: Okay. Ladies and gentlemen of the jury,
4 : 0 8 P M 12 we've gone a lot faster than we thought we were going to go, so
4 : 0 8 P M 13 we're going to quit for the day early so you can beat the
4 : 0 8 P M 14 traffic on this side rather than the backside. I think we're
4 : 0 9 P M 15 going to be able to finish this case tomorrow, have arguments
4 : 0 9 P M 16 by the lawyers -- the rest of the evidence, arguments by the
4 : 0 9 P M 17 lawyers, and my charge on the law, and that takes a while to
4 : 0 9 P M 18 get together. I give it to the lawyers. They make additions
4 : 0 9 P M 19 or corrections. Then I have to redo it. Then I have to make
4 : 0 9 P M 20 13 copies of it, and, of course, when I make the 13 copies, the
4 : 0 9 P M 21 Government copier always breaks, so it takes a while. So why
4 : 0 9 P M 22 don't y'all come in at 10:30 tomorrow morning rather than 9:30,
4 : 0 9 P M 23 and we'll start again with the trial, and I'm sure it'll be to
4 : 0 9 P M 24 you tomorrow afternoon, okay? And if -- we'll start, and then
4 : 0 9 P M 25 I'll buy you lunch. They'll have it back there. So we'll see

4 : 0 9 P M 1 you tomorrow.

4 : 0 9 P M 2 Don't discuss the case among yourselves. Don't
4 : 0 9 P M 3 let anyone discuss it with you. Don't make any decision until
4 : 0 9 P M 4 you've heard all the evidence in the case plus my final charge
4 : 0 9 P M 5 and the lawyers' final arguments. We'll see you tomorrow.
4 : 0 9 P M 6 Thank you.

7 (Jury out at 4:09 p.m.)

4 : 1 0 P M 8 THE COURT: Okay. Everything else -- you said you
4 : 1 0 P M 9 wanted to go over some charges that you may want added?

4 : 1 0 P M 10 MR. SCHOEN: Yes, Your Honor. The Government
4 : 1 0 P M 11 identified a number of charges, and I don't actually have the
4 : 1 0 P M 12 charges pulled up, and I'm happy to try to locate them and
4 : 1 0 P M 13 email them --

4 : 1 0 P M 14 THE COURT: Okay.

4 : 1 0 P M 15 MR. SCHOEN: -- to your clerk, but basically the four
4 : 1 0 P M 16 we can think of that are maybe not always in the standard
4 : 1 0 P M 17 charges are a specific technique charge.

4 : 1 1 P M 18 THE COURT: We did that one, because I just told him
4 : 1 1 P M 19 while I was sitting up here.

4 : 1 1 P M 20 MR. SCHOEN: All right. That one. Joint possession.

4 : 1 1 P M 21 THE COURT: Probably not, but we'll --

4 : 1 1 P M 22 MR. SCHOEN: Joint possession charge. A charge
4 : 1 1 P M 23 regarding flight as consciousness of guilt.

4 : 1 1 P M 24 THE COURT: I'll see whether the -- okay.

4 : 1 1 P M 25 MR. SCHOEN: And also a charge regarding obstruction

4 : 1 1 P M 1 or other evidence to cover up a crime, meaning consciousness of
4 : 1 1 P M 2 guilt can be considered as substantive evidence of a crime.

4 : 1 1 P M 3 THE COURT: I can understand the factual basis for
4 : 1 1 P M 4 the first three. What's the factual basis for the fourth?

4 : 1 1 P M 5 MR. SCHOEN: Your Honor, we would just ask that the
4 : 1 1 P M 6 jury be allowed to consider the fact that Ms. Ellison was
4 : 1 1 P M 7 trying to cover up -- she offered this statement and then
4 : 1 1 P M 8 recanted this statement -- as affirmative evidence of a
4 : 1 1 P M 9 conspiracy.

4 : 1 1 P M 10 THE COURT: You're talking about Ms. Ellison and
4 : 1 1 P M 11 not --

4 : 1 1 P M 12 MR. SCHOEN: Certainly, but just to establish the
4 : 1 1 P M 13 existence of the conspiracy. We have to show that he's a part
4 : 1 1 P M 14 of it, but to establish the existence, I think it's fair game
4 : 1 1 P M 15 for that.

4 : 1 1 P M 16 THE COURT: Okay. Yes, sir?

4 : 1 1 P M 17 MR. SHAHID: Well, certainly the very last thing
4 : 1 2 P M 18 about an obstruction, this doesn't rise to the level of
4 : 1 2 P M 19 obstruction. I mean, that's pretty much a stretch.

4 : 1 2 P M 20 THE COURT: Of course, lying to the police is
4 : 1 2 P M 21 probably obstruction, at least under the sentencing guidelines.

4 : 1 2 P M 22 MR. SHAHID: It could if she's lying to the police.

4 : 1 2 P M 23 THE COURT: Okay.

4 : 1 2 P M 24 MR. SHAHID: But she's --

4 : 1 2 P M 25 THE COURT: How about to the Court? That would be

4 : 1 2 P M 1 even worse.

4 : 1 2 P M 2 MR. SHAHID: Lying to the Court would be even worse,
4 : 1 2 P M 3 but it hasn't established that she was lying. She got nervous
4 : 1 2 P M 4 and wanted, by his testimony, to recant some of her testimony.

4 : 1 2 P M 5 THE COURT: If that's the factual basis, I'll
4 : 1 2 P M 6 evaluate that when I get the charges and see if it's
4 : 1 2 P M 7 applicable, but it looks like the first three are going to come
4 : 1 2 P M 8 in. Are you going to have problems with the first three?

4 : 1 2 P M 9 MR. SHAHID: well, of course I do, but I don't know
4 : 1 2 P M 10 if I have an objection to them. Yes, I have a problem with
4 : 1 2 P M 11 them.

4 : 1 2 P M 12 THE COURT: Okay. It's the law. Unfortunately, you
4 : 1 2 P M 13 get to take the bitter with the sweet, right? Anything else?

4 : 1 2 P M 14 MR. SHAHID: Probably not until I see what you have.

4 : 1 2 P M 15 THE COURT: Now, I understand that you may have one
4 : 1 3 P M 16 witness in the morning if you can find him?

4 : 1 3 P M 17 MR. SHAHID: I've been checking on the status of
4 : 1 3 P M 18 that.

4 : 1 3 P M 19 THE COURT: Okay.

4 : 1 3 P M 20 MR. SHAHID: And see if there's any update.

4 : 1 3 P M 21 THE COURT: Have you and your client made a decision
4 : 1 3 P M 22 whether or not he wants to testify?

4 : 1 3 P M 23 MR. SHAHID: well, we have previously talked about
4 : 1 3 P M 24 that, but let me just double-check with him.

4 : 1 3 P M 25 THE COURT: And, of course, we can go over this in

4 : 1 3 P M 1 the morning too. I just wanted to find out --

2 (Pause.)

3 MR. SHAHID: He's going to sleep on it.

4 THE COURT: Okay. That's a good idea, okay? All
5 right. So we'll see y'all at 9:30 tomorrow morning, and we'll
6 go -- we'll get the charges to you and get back any criticism
7 that y'all have, additions or corrections, okay?

8 MR. SHAHID: So we're expected to get these sometime
9 tonight, you say?

10 THE COURT: You'll get those before suppertime.
11 Thank you.

12 (End of proceedings.)
13
14
15
16
17
18
19
20
21
22
23
24
25

* * * * *

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

REPORTER TRANSCRIPT CERTIFICATE

I, Tana J. Hess, Official Court Reporter for the United States District Court, Middle District of Florida, certify, pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcription of the stenographic notes taken by the undersigned in the above-entitled matter (Pages 1 through 206 inclusive) and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States of America.



Tana J. Hess, CRR, RMR, FCRR
Official Court Reporter
United States District Court
Middle District of Florida
Tampa Division
Date: February 16, 2022